Innovations in Legal Scholarship
This issue of Washington University Law Magazine emphasizes the vital importance of scholarship at our school. Washington University School of Law produces great scholarship, as well as great lawyers. The two are closely related. A great law school is measured by its impact in the world. I know of no great law school that lacks faculty members who develop pathbreaking ideas—whether they are found in the form of books, articles, statutes, treatises, or briefs. It is surely more expensive to support a school when it has both a research and a teaching mission, and money could be saved if a school restricted its expectations to great teaching. But as this issue of the Washington University Law Magazine shows, even if teaching were the sole measure of a law school, the greatest teaching often includes deep investment of both students and faculty in the development of law through scholarship.

As you read this issue of the magazine, we hope you will become better acquainted with several elements of the scholarly environment at Washington University Law. First, we highlight four important new books written by our faculty. Second, we note cutting-edge empirical research spanning topics such as employment discrimination, the role of international courts, judicial pay and performance, corporate fraud, justice in legal negotiation, and judicial ideology. Third, we include students who have published high-quality articles through the mentorship of faculty. These examples of transforming scholarship by both faculty and students help capture some of that combined sense of community warmth and intellectual liveliness that makes our school so special. They also acknowledge the crucial link between scholarship and teaching, which is so critical to keeping legal education current in a rapidly changing professional environment.

Other important highlights of this issue include profiles of our five new faculty members—Scott Baker, Robert Kuehn, Mae Quinn, Hillary Sale, and Brian Tamanaha—and of the exciting contributions of our first Senior Professor of Practice, Charles Burson, and new Faculty Fellows, Sarah Jane Forman and B. Don Taylor III. Despite difficult economic times, we are grateful to have been able to attract these highly accomplished teachers, scholars, and practitioners. Also in this magazine, Professor Michael Greenfield brings his own unique perspective to our now regular “Why I Teach” column.

Finally, this issue spotlights new developments at the school, including those in our Crimes Against Humanity Initiative, in environmental and sustainability practices, in our academic partnership with the Brookings Institution, and in a major conference focusing on federal budgetary matters. Additionally, we are proud of the achievements of our alumni, including those featured here: immigration attorney Rochelle Fortier Nwadibia, environmental and corporate law attorney Mike Ford, and family law practitioner David Littman.

As you read about some of our recent scholarly achievements, new faculty, latest endeavors, and outstanding alumni, I hope you will learn more about what has allowed us to forge ahead during challenging economic times. We continue to strive to be at the center of outstanding legal education and scholarly work.
WASHINGTON UNIVERSITY LAW MAGAZINE

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(front cover) Law faculty and students engage in groundbreaking research through both independent and collaborative scholarly projects.

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Coupled with outstanding teaching, scholarly research is a cornerstone of Washington University Law. Law faculty continue to make vital contributions to their fields through publishing, analysis, and academic collaborations with their students. The following section highlights some of the exciting work taking place at the law school.
Four New Books Feature Faculty Research

ASHINGTON UNIVERSITY LAW FACULTY members bring passion and dedication to their legal scholarship. The following is a look at four books written by faculty members. The first two books, both upcoming, use historical analysis to offer new legal perspectives; the next two books represent fresh approaches to casebooks, in family law and environmental law respectively.

Using Better Judgment

WHEN PROFESSOR BRIAN TAMANHA officially joins Washington University Law’s faculty in January 2010, he will bring with him the distinction of having debunked one of the more pervasive legal myths of the 20th century.

In his forthcoming book, Beyond the Formalist–Realist Divide: The Role of Politics in Judging, Tamanaha describes this myth.

The myth goes on to describe how, in the 1920s and 1930s, “realists” arrived on the scene. They held that the law is full of gaps and contradictions—the same precedents can lead to different results depending on which judge hears the case. Judges decide cases based upon outcomes they desire, and then find legal support for the decision.

Interestingly, a combination of technology and luck led Tamanaha to determine that this widely accepted and oft-repeated “narrative” was, in fact, fiction.

“The most honest judge knows that the authorities with which his opinions are garnished often have had very little to do with the decision of the courts—perhaps have only been looked up after that decision was reached upon the general equities of the case.”

Brian Tamanaha

[Research Excerpt]

Law faculty draw from their wide-ranging expertise to regularly publish their work in an extensive variety of scholarly journals.

“Overbreadth in criminal liability rules, especially in federal law, is abundant and much lamented. … In some areas of expanding substantive criminal law, answers to ‘overcriminalization’ … lie not in reducing the scope of conduct rules, but in greater reliance on mens rea doctrines, redesign of enforcement institutions, and modification of sentencing practices.”

Samuel W. Buell, Professor of Law

“When,” Tamanaha then asked a colleague, “do you think that was written?” The colleague replied that it must have come from one of the leading “realists,” Benjamin Cardozo, perhaps, writing in the 1920s.

In fact, the passage dates to 1881—and it is from William G. Hammond, first full-time dean and professor at the St. Louis Law School (the predecessor to Washington University Law) and supposedly a “formalist.”

Tamanaha—who reads widely in sociology, anthropology, and many other disciplines—sees the debunking of this “formalist–structuralist” myth having wide-ranging implications not just for the law, but also for legal history and political science.

The myth “consists of a web of interlocking misinterpretations and confusions bundled in a mutually reinforcing package that is now virtually taken for granted,” he writes.

“The consequences of this collection of errors are ongoing and pernicious. Rooting out the formalist–realist story will help us recover a sound understanding of judging.”

By Timothy J. Fox

Thomas Jefferson’s Legacy


Yes, lawyer.

While Jefferson’s biographers and other historians often either ignore or downplay Thomas Jefferson’s legal career, David Konig, professor of law and of history in Arts & Sciences, believes that much can be learned by studying Jefferson’s time practicing in Virginia.

“Historians’ treatment of Jefferson’s role as a lawyer often betrays a certain amount of ‘lawyer bashing,’ on their part,” says Konig, who is currently editing Jefferson’s Legal Commonplace Book for Princeton University Press. Interestingly, the book demonstrates that Jefferson both paraphrased and commented on the legal scholarship of the day.

“I believe that Jefferson was a great statesman because he was a lawyer—not despite being a lawyer,” Konig explains.

In fact, in the nearly 1,000 cases that Jefferson handled between 1767 and 1774, he displayed “an uncommon interest in civil liberties and rights,” says Konig, noting that Jefferson took many pro bono cases, as well as slaves’ suits for freedom.

Those cases show Jefferson struggling with perhaps his greatest conflict: reconciling his hatred of slavery with the fact that slavery was the law of the land and deeply engrained in Virginia culture—to say nothing of the fact that Jefferson was, himself, a slave owner.

“Jefferson tried early in his career to convince the Virginia Assembly to end slavery, but the political forces were very strong against him. Slavery was so pervasive that Virginia law made it nearly impossible for him to free his own slaves,” Konig says.

As a product of the Enlightenment, Jefferson put his faith in the future improvement of society. He believed in natural law—that if America was a well-educated democratic society, then slavery would end as a result.

“Jefferson’s great tragedy is that he had it backwards,” explains Konig. “He didn’t realize that slavery had to be ended to bring about the society he wanted, not the other way around.”


“He believed that the law should be a learned profession, not just a job,” Konig says. “When he created the University of Virginia School of Law, he built not just a lawyer school, but a law school.”

Konig strives to maintain a similar distinction in his dual role as historian and legal scholar. Fortunately, he has found a rich environment for both at Washington University Law.

“The school is increasingly moving into interdisciplinary areas, and it is very supportive of the notion of history,” he says.

“After all, law is based on history—on precedent,” he says. “The study of history shows how people have accommodated dilemmas. It serves as a guide, a way to put into perspective the struggles of today.”

By Timothy J. Fox
Two new, innovative textbooks by law faculty look at changes in society and their impact on the law.

One, co-authored by Susan Frelich Appleton, the John S. Lehmann Research Professor for 2009–10 and the Lemma Barkeloo & Phoebe Couzins Professor of Law, juxtaposes the institution of adoption with the burgeoning practice of assisted reproduction. The other, authored by Kathleen F. Brickey, the James Carr Professor of Criminal Jurisprudence, is the first law school text devoted exclusively to the study of environmental crime.

In her book, Appleton examines a host of different family arrangements and legal responses—in turn, reflecting a society very much in flux. In her new book, Brickey bridges the historical divide between two discrete, specialized fields of law. Both books contribute to the expansion of the law school curriculum and offer students the opportunity to work with timely and unsettled issues.

Appleton’s book, *Adoption and Assisted Reproduction: Families under Construction* (Aspen), begins by exploring the law of parentage and its evolution. In her introduction, Appleton and her co-author, Professor D. Kelly Weisberg of the University of California Hastings College of Law, state: “Once parentage rules relied on biology, marriage to the child’s mother, and adoption. Now such familiar connections merely provide a starting point for more expansive and often more contested approaches that look at behaviors, functions, and intentions.”

The book has three primary points of departure: Whom does the law originally assign as the parent of a child? How does adoption change that original assignment? And how has the law addressed the challenges to traditional approaches posed by advances in reproductive technology? She says that the content of her text is meant to challenge common assumptions and provoke lively class discussions.

“I’ve been interested for many years in the way that family law constructs our understanding of parentage,” she says. “Many outside observers might think that the parent–child relationship is created by nature, with adoption as an exceptional case. But the law shapes our understanding of what constitutes a parent–child relationship well beyond the adoption context.”

Appleton says some scholars trace the origins of adoption to the early Romans, but modern adoption—as a practice to promote child welfare—officially began in 19th-century Massachusetts with the enactment of the first American adoption statute.

Common law principles often fill gaps in statutory laws. Appleton supplies the example of a woman who conceives a pregnancy so that she and her same-sex partner can rear the child. They function as a family for a time, but the family eventually dissolves and issues of custody, visitation, and child support arise. The partner with the biological link to the child might seem to have the inner track, but not always. The other partner would get equal rights and responsibilities in some jurisdictions, not quite equal in others, and no legal recognition at all in still others.

Even in families that appear to conform to more traditional norms, one finds significant variations in how the law responds to assisted reproduction—if the law addresses the subject at all. Genetic parents, for instance, might need a so-called “surrogate”
to carry a pregnancy. When donor sperm, egg, or embryo is used, the intent underlying the arrangement is not for the child to be reared by the genetic parents, but rather by the woman who carries the pregnancy and her spouse or partner, if she has one.

“Different jurisdictions have followed different approaches to the question whether genetics, gestation, or intent determines the legal consequences of the particular arrangement, and people often travel to a place that has laws consistent with their objectives—a phenomenon known as ‘reproductive tourism,’” Appletón says. “In many places, a free market flourishes and the absence of regulation proves attractive,” she adds.

The Internet also has contributed to change. For example, Web sites allow many offspring to discover the identity of the sperm donor who helped conceive them and any genetic half-siblings. Appletón says the law often takes a back seat to both market forces and informal arrangements made by interested parties.

Appletón incorporates works of literature, nonlegal scholarship, and popular culture to help bring to life the emotion-charged issues raised by the legal topics, including issues of identity, ancestral roots, and family secrets. For example, she uses two contemporary films, Juno, about a teen relinquishing her baby for adoption, and Casa de los Babys, about a group of affluent American women visiting an unnamed Latin American country to adopt, as talking points for discussions about race, class, gender, culture, privilege, and sexuality.

Appletón and co-author Weisberg recently completed work on the fourth edition of their casebook Modern Family Law: Cases and Materials. Appletón says that producing a casebook challenges a scholar to conceptualize a field, to explore ways to immerse students in the field, and to introduce them to critiques of the field. Nonetheless, Appletón concedes that she often finds even more rewarding the freedom to venture beyond such basics and to undertake the more creative work that law review articles permit. Over the years, her scholarly agenda has included both types of publications.

**Brickey’s Book.** Environmental Crime: Law, Policy, Prosecution (Aspen), is designed for use in a variety of contexts, including law school courses and seminars and more broadly, in graduate and undergraduate environmental studies programs.

Although the historical origins of environmental regulation were found in the law of public nuisance, the advent of major environmental legislation in the 1970s and 1980s heralded an era of increased public and Congressional support for sending polluters to jail, Brickey notes. The new laws included the Clean Water Act; Clean Air Act; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and the Resource Conservation and Recovery Act (RCRA). Other measures led to the creation of the U.S. Environmental Protection Agency (EPA), the development of a formal environmental crime enforcement program in the Department of Justice, and for the first time the imposition of felony penalties for serious breaches of environmental standards.
of the number and complexity of legal and factual issues that had to be resolved. When all was said and done, the defendants were acquitted, and the citizens of Libby were left angered that justice had not been served.

“I use case studies like this and the Consolidated Edison steam pipe explosions in New York to illustrate the enforcement challenges that environmental regulators and prosecutors face,” Brickey observes. “The book also demonstrates how environmental laws interface with both conventional criminal statutes and worker protection laws like OSHA and the Mine Safety Act, and explores the social consequences of serious environmental violations.”

Writing the environmental crime book was “a liberating experience,” Brickey notes. “While it built on a number of things I’ve done in my white collar crime casebook, it also offered a wonderful opportunity to experiment with innovative approaches to the material. The end result is that the book contains a lot of elements that historically haven’t been put together as a cohesive whole.”

Her next project, also for Aspen, will be a book on corporate fraud. “Bernie Madoff finally took my mind off of Enron,” she quips. 

By Tony Fitzpatrick

Sampling of Recent Faculty Publications

IN ADDITION TO those books featured in this issue, the following is a sampling of forthcoming and recently published books written, co-written, edited, or co-edited by law faculty. This sampling from 2008 and 2009 consists of casebooks and textbooks, treatises, manuals, and other scholarly works. Faculty members also regularly publish supplements to their casebooks, Legal Checklists, Nutshells, selected statutes and forms, and conference proceedings in wide-ranging areas of the law. Additionally, they draw upon their expertise to regularly contribute articles and/or chapters to various law reviews, peer-reviewed journals, encyclopedias, and other print and Web-based publications, as well as serve as editors of various publications.

Cheryl D. Block

Kathleen F. Brickey

Marion G. Crain

Gerrit De Geest

Rebecca S. Dresser

Michael M. Greenfield

Emily Hughes

Peter A. Joy
Do No Wrong: Ethics for Prosecutors and Defenders, ABA (2009)

Daniel L. Keating

Pauline Kim
see previous listing with Marion Crain

Stephen H. Legomsky
Immigration and Refugee Law and Policy, Foundation Press (5th ed., forthcoming)

Ronald M. Levin

Daniel R. Mandelker

Troy Paredes

Leilani Nadya Sadat
Immigration and Refugee Law and Policy, Foundation Press (5th ed., forthcoming)

Ronald M. Levin

Daniel R. Mandelker

Troy Paredes

Adam H. Rosenzweig

Leila Nadya Sadat

Hillary A. Sale

Karen L. Tokarz

Peter J. Wiedenbecker

[Research Excerpt]

“Surely any cost benefit analysis of U.S. rendition practice needs to account for the high cost associated with any credible accusation that these crimes have been committed by U.S. officials or persons working on behalf of the U.S. government. The real ‘war’ against international terrorism is far from over, as recent events in Afghanistan, Iraq, and Pakistan have demonstrated.”

Leila Nadya Sadat, Henry H. Oberschelp Professor of Law and Director, Whitney R. Harris World Law Institute “Shattering the Nuremberg Consensus: U.S. Rendition Policy and International Criminal Law,” Yale Journal of International Affairs
Empirical Research in the Law

What the latest legal research is telling us about how the world works

n early champion of empirical research in the law, Professor Pauline T. Kim acknowledges that while not all legal questions are empirical in nature, empirical studies can be particularly useful for elucidating policy issues.

“Some legal questions cannot be answered empirically due to data or other methodological limitations, while others raise fundamental value choices,” says Kim, associate dean for research and faculty development. “But where policy debates get bogged down over clashing assumptions about how the world, in fact, works, empirical studies can help to sort out these questions.”

An expert in employment law, workplace privacy, and litigation and the courts, Kim has played a key role in building a dynamic empirical research...
community at the law school. Faculty have turned to sharp-edged empirical analyses to examine provocative topics, such as the use of injunctive relief to combat employment discrimination and the role of national courts in articulating public policy in modern democracies. They also have analyzed judicial pay and performance; patterns in corporate fraud prosecutions; measurements of judicial ideology; and the significance of procedural justice in negotiations.

The law school’s Center for Empirical Research in the Law (CERL) has fostered much of this work. A member of its core faculty, Kim has leveraged its resources in a number of projects, including a recent one on how judges make decisions in the federal courts of appeal.

Her study, published in the spring 2009 University of Pennsylvania Law Review, looks at decision-making on federal appellate courts’ three-judge panels. This institutional structure is designed to promote discussion and collaboration among judges, who, in turn, presumably make better decisions as a panel.

Scholars have posited many theories to explain how federal appeals court judges who hear cases together influence one another’s votes—what scholars call “panel effects.” However, Kim's research is one of the first to do so empirically. “The study explores when panel effects occur in an effort to better understand why they occur,” she says.

To learn how judges influence one another, Kim tested two competing explanations of panel effects. She analyzed data from 787 sex discrimination cases decided between 1995 and 2002. In her study, Kim constructed an empirical test to distinguish whether judges are influenced by the internal deliberations of the panel, or by the judges’ strategic anticipation of how their decision will be viewed by the Supreme Court or their other circuit colleagues.

Kim found that panel effects do not appear to be the result of a dynamic exclusive to the three-judge panel, but are conditioned on the preferences of all the appellate judges on the circuit. “Judges are strategic actors influenced not only by their policy goals, but also by the institutional context in which they operate,” she observes.

“Pauline's research is very interesting,” says Andrew D. Martin, professor of law, CERL founding director, and professor in and chair of the Department of Political Science in Arts & Sciences. “It’s what we call a judicial politics project, and it holds important implications for understanding judicial policy and institutional design.”

Kim and Martin have collaborated on a handful of projects supported by CERL, a burgeoning epicenter for interdisciplinary studies at Washington University. Among them is a study of government-initiated, employment discrimination litigation in the federal courts.

With Professor Margo Schlanger, now on the law faculty at the University of Michigan, the research team collected and coded more than 2,000 cases initiated by the Equal Employment Opportunity Commission (EEOC) between 1996 and 2006.

Data analysis is under way, to be followed by reports that will shed light on how the EEOC operates, litigation dynamics, and the extent to which judges shape the outcomes of cases.

Another CERL-supported project, the U.S. Supreme Court Judicial Database, has received National Science Foundation funding. This project extends the Supreme Court Judicial Database, which was originally created by Michigan State Professor Harold Spaeth, and collects critical information about Supreme Court cases from 1953 to the present.

CERL is collaborating with five universities—Michigan State, Northwestern, University of Pennsylvania, Princeton, and Stony Brook—to back-fill data from 1789 through 1953. When complete, the repository will serve as the most comprehensive and useful statistical record available for the Supreme Court.

**International Courts in Modern Democracies**

CERL IS AS MUCH A VEHICLE for advancing the study and practice of empirical research as it is a rich training ground for students eager to sample its goods.

“CERL provides an interface between the law school and the political science department, whose Law & Courts program was recently ranked No. 1 in the country,” Martin says. “Our students have done amazingly well because CERL involves them in the life of the law school. In turn, our PhDs have helped the law faculty improve upon their scholarship.”

Washington University students—“literally an army,” Martin says—have been recruited to collect and code decision data in yet another ambitious CERL-supported project: a cross-national study of 60 constitutional courts.

“If you look across the globe, you will see that these courts play very different roles in modern democracies,” Martin says. “Our study will look at why some courts exert influence over public policy outcomes while others do not. It also will attempt to answer if such influence can be induced by institutional design, or if other factors such as public opinion hold sway.”

Working with Matthew J. Gabel, associate professor of political science in Arts & Sciences, and with professors at both
Emory University and the University of Rochester, Martin is testing three competing arguments at the center of theoretical debates about the relationship between institutional design and judicial influence. To this end, the team is building a Web-based information system to coordinate data collection from courts around the world.

“We’re tapping the entire University community, especially those with specialized language skills, because many of the opinions are written in languages other than English,” Martin adds.

### Judicial Pay and Performance

**WHEN U.S. CHIEF JUSTICE** John G. Roberts claimed that low judicial salaries were creating a “constitutional crisis” in his 2006 report on the federal judiciary, Professor Scott A. Baker wanted proof. Baker knew that many in the legal field shared Roberts’ view. The salary discrepancy between judges on the bench and attorneys in private practice had grown increasingly wider, fanning heated debates.

But has the salary gap compromised the quality and performance of the federal judiciary? Baker set out to answer the question with an empirical study that compared judicial salaries to those salaries of the next best financial opportunity for most circuit judges. His findings were published in the *Boston University Law Review* in 2008.

Baker recorded data for 259 circuit judges appointed between 1974 and 2004. Law firm partnership salaries in the region at the date of judicial confirmation provided a relevant benchmark for attorneys the same age as the judges in the study. Examining a wide range of judicial output measures—voting patterns, citation practices, speed of disposition, and opinion quality—the study found little evidence to support Chief Justice Roberts’ claim of a constitutional crisis.

Baker views “this study as a first glimpse at the issue, based on the best available opportunity data,” which, he says, “without doubt, is imperfect.” When it comes to important issues like judicial salaries, Baker says, one study is not enough. Multiple studies are needed from a host of different angles, using many different data sets.

Baker, who works at the intersection of law and economics, spends his time on an array of topics. His other co-authored studies include one on the economics of limited liability partnerships among New York law firms, which was published in the *University of Illinois Law Review*. He and his co-researchers also are studying the effects of major patent court decisions on the stock prices of firms filing amicus briefs. Baker specifically has documented effects resulting from the 2006 decision of the U.S. Supreme Court in *eBay Inc. v. MercExchange LLC*.

### Tracking Corporate Fraud

**EMPIRICAL RESEARCH** has spread to topics exploring white collar crime and the corporate fraud trials that have peppered the news. Dozens of executives charged with securities and bank fraud, conspiracy, perjury, obstruction of justice, and other crimes are awaiting trial in U.S. courts. How might these cases impact the spiraling rate of corporate fraud and the prosecutorial practices aimed at controlling it?

Kathleen F. Brickey, the James Carr Professor of Criminal Jurisprudence, is tackling that question. A nationally recognized expert on corporate and white collar crime, Brickey tracks data on major corporate fraud prosecutions that have been brought to light since the Enron scandal broke in 2001.

For a seminal study, Brickey collected data that covers the period of March 2002 through January 2006, examining trials relating to scandals at 17 major companies. She documented her findings in a paper, “In Enron’s Wake: Corporate Executives on Trial,” published in the *Journal of Criminal Law & Criminology*.

Analyzing data sets from the Enron case, as well as high-profile cases involving top-line executives at companies such as Adelphia, Credit Suisse First Boston, ImClone, Qwest, Tyco, and WorldCom, Brickey notes that by the end of January 2006, some 46 defendants had gone to trial in 23 separate prosecutions and that a number of other executives who had been charged were awaiting trial. More significantly, as of mid-2004, prosecutors had already struck plea agreements with 73 defendants, many of whom became cooperating witnesses and testified against their peers.

She concludes that “while guilty pleas and cooperation agreements are strategically significant in developing these cases, the number of CEOs, CFOs, and other senior managers who have been charged and tried belies critics’ assertions that mid-level managers who plead guilty become scapegoats, while their superiors go scot free.”

Brickey continues to update and expand the data set, which provides the most comprehensive picture of executives on trial available to date.

### Justice in Legal Negotiation

**IN HER DAYS AS A HARVARD LAW STUDENT,** Professor Rebecca Hollander-Blumoff learned that legal endowments play a critical role in legal negotiations. Soon after going into practice at a small white collar criminal defense firm in New York, however, she noticed a phenomenon she had not read or studied much:
The dynamics between attorneys influenced negotiations just as much as the legal rules the parties brought to the table.

“Prior relationships, reputations, and negotiation behavior played a much bigger role than I had expected,” Hollander-Blumoff says. “I began to think more about how the study of human behavior—the psychology of negotiation—could contribute meaningfully to the advancement of the field of legal negotiation.”

Her recent empirical scholarship in negotiations has produced several papers, including “Procedural Justice in Negotiation: Procedural Fairness, Outcome Acceptance, and Integrative Potential” (with Tom R. Tyler), published in Law & Social Inquiry; “The Objective Antecedents of Procedural Justice in Bilateral Negotiation,” currently in progress; and “Just Negotiation,” selected for presentation at the Stanford–Yale Junior Faculty Forum in May 2009.

Hollander-Blumoff argues that fairness of process in negotiation is critically important in legal negotiation. “Negotiators are affected by procedural justice,” she explains. “That effect is independent of the effect that favorability of the outcome (how good the outcome is) has on people, and it is independent of the effect of how fair the outcome is.

“People care, independently, about the way they are treated in negotiation. When people feel that they have been treated more fairly, they are more enthusiastic about accepting the agreement.”

Of her studies, Hollander-Blumoff says, “Empirical work is a great way to connect legal theory and legal doctrine to what lawyers and other players in the legal system really do. That’s a key reason why it’s gained currency.”

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The more that empirical scholarship is produced in both quality and quantity—thanks in no small part to the leadership role that Washington University Law is playing—the more that scholars elsewhere must, themselves, engage in empirical scholarship, if they are to participate in the relevant debates.”

According to Law, there are many ways by which one can measure judicial ideology, but little has been written about how researchers should go about choosing among these methods. “We acknowledge and thoughtfully discuss some of the recurring theoretical and practical obstacles of doing empirical research on judicial ideology,” Law says. “We also offer a practical guide to empirical researchers as to how different approaches have sought to tackle these obstacles, how the approaches perform relative to one another in different contexts, and how context-specific the selection of an appropriate measurement approach happens to be.”

Active in a number of scholarly fields, Law has written on topics including voting and publication patterns among court of appeals judges, the nature of judicial power, and the globalization of constitutional rights.

In his most recent study, he draws on interviews he conducted in Japan with judges, officials, scholars, and members of its Supreme Court to explore why Japan’s Supreme Court has failed to actively enforce the country’s postwar constitution. The resulting paper, “The Anatomy of a Conservative Court: Judicial Review in Japan,” is forthcoming in the Texas Law Review.

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Student/Faculty Collaborations: A Notable Success

On the first day of class in her Socialist Law in Transition Seminar, Professor Frances Foster startles her students with this announcement: “I have complete confidence,” she says, “that every one of you can produce a publishable paper.” In other words, each student is capable of groundbreaking legal research and writing an article worthy of being published in an academic journal.

HOWEVER SURPRISED FOSTER’S STUDENTS MIGHT BE, in fact, they don’t disappoint her. No fewer than eight of her students published papers in scholarly journals in 2008 alone. During the 21 years that she’s been at Washington University Law, a variety of law journals have published articles from 30 of her students.

Their success thrills Foster, the Edward T. Foote II Professor of Law—and impresses her. “They are producing some of the finest work in the country,” she says, emphatically. Some of them, she adds, “produced articles that—had the students been law professors—would have counted for tenure at the top law schools in the nation.”

Daniel Mandelker, the Howard A. Stamper Professor of Law, agrees. “One of my students won an award for the best paper published on environmental law in a contest that included law professors and practitioners,” he notes. “One article published many years ago has become a classic on its topic—vested rights in land development—and has been cited several times in court decisions.” Two of Mandelker’s other students also published in the past year.

Indeed, numerous law school faculty have mentored students as research assistants and guided them in publishing their work. An article by Elizabeth McDonald, JD ’09, titled “Sperm Donor or Thwarted Father? How Written Agreement Statutes are Changing the Way Courts Resolve Legal Parentage Issues...
in Assisted Reproduction Cases,” began as a research paper for a seminar taught by Susan Frelich Appleton, the John S. Lehmann Research Professor for 2009–10 and the Lemma Barkeloo & Phoebe Couzins Professor of Law, and ended up being published in the April 2009 Family Court Review.

Another of Appleton’s students, Jason N.W. Plowman, JD ’08, adapted his seminar paper, “When Second-Parent Adoption Is the Second-Best Option: The Case for Legislative Reform as the Next Best Option for Same-Sex Couples in the Face of Continued Marriage Inequality,” for publication in The Scholar: St. Mary’s Law Review on Minority Issues (2008). He also worked on a research project, under the supervision of Professor Laura Rosenbury, which resulted in an article co-written with Northern Kentucky University Professor Richard Bales. Their article, “Compulsory Arbitration as Part of a Broader Employment Dispute Resolution Process: The Anheuser-Busch Example,” was published in the fall 2008 issue of the Hofstra Labor & Employment Law Journal.

Professor Pauline Kim’s student Bryan Lammon, JD ’08, published a challenging theoretical piece on judicial decision-making, titled “What We Talk about When We Talk about Ideology: Judicial Politics Scholarship and Naive Legal Realism,” in the summer 2009 St. John’s Law Review. Similarly, Noah Gold, JD ’09, wrote an article for a seminar on corporate fraud taught by Kathleen F. Brickey, the James Carr Professor of Criminal Jurisprudence.

Gold’s article, “Corporate Criminal Liability: This Is a Stick-Up! Do As We Say, and You Won’t Be Indicted,” was accepted by a handful of publications, but he ultimately decided upon the Georgetown Journal of Law & Public Policy.

These scholarly achievements happen only after a lengthy and arduous process. Typically, articles begin with a seminar paper, though some originate in independent research projects. Right from the start during topic selection, faculty work closely with students. Some students choose subjects because of a personal passion for the subject. Brett Rowan, JD ’08, had studied, worked, and traveled throughout Europe and became fascinated with immigration issues. “He wrote a really challenging piece on the impact of Slovenia’s immigration law,” Foster observes. Rowan’s article, “The Price of ‘European’ Identity: The Negative Social and Economic Impact of Slovenian Migration Law,” will appear this year in the Loyola of Los Angeles International and Comparative Law Review.

Some students choose topics because of their academic background. Foster’s student Jessica Wilson, JD ’08, had studied Russian language and literature. “She ended up,” Foster says, “writing a brilliant literary analysis of early Russian texts on law and found a tradition explaining why it is so difficult to implement the rule of law there. She was the first person ever to identify some of these early works.” Wilson’s article, “Russia’s Cultural Aversion to the Rule of Law,” appeared in the Columbia Journal of East European Law.

Faculty work closely with students throughout the research and writing process. “They begin with a topic statement. Then we talk about research,” Foster explains. “They hand in a first draft—and then the work really begins.” Foster says she is “infamous” for her red ink. Repeated revisions continue after semester’s end. “They’re competing against law professors.” Faculty also help students identify likely journals and guide the students through the submission process. But at the end of this demanding enterprise, the articles are typically so good that their authors receive multiple publication offers, according to Foster.

Students have high praise for the guidance their professors provide. “Professor Appleton was a wonderful mentor to me during law school,” notes McDonald, whose paper won the Hofstra Law/AFCC family law writing competition. “She gave me valuable feedback as I wrote the paper and encouraged me to submit my article to various competitions. Throughout the writing process, she challenged me to consider how gender complicated my legal analysis of assisted reproduction, for instance, by grappling with the implications these decisions have for women and their reproductive autonomy.”

Lammon expressed similar appreciation. “Pauline Kim was phenomenal in encouraging this,” he says. “She writes in this area. It was very valuable to have someone say, ‘If you’re going to write about this, you need to read x, y, and z,’ making sure that you’re getting it right, not misinterpreting what others are saying.
For their part, professors find these students a joy to help. Foster says their dedication is extraordinary. "One semester I had several students hand in five drafts," she recalls. "One student was so passionate about her topic that I had to tell her at the end of November that she was not allowed to do any more research!"

Because these topics are on the cutting edge of new law, students often find current events reshaping their articles as they work. "They are writing about the very hottest topics," Foster says. "They're watching law change."

Their success in publishing demonstrates that they are making important contributions to legal knowledge. In several cases, Foster says, "the student author is literally the first legal scholar to identify sources in a foreign language, translate them, and analyze them." Seth Bridge, JD '08, was "the first person to locate Russia's counter-terrorism law, analyze it, and put it into perspective."

His article, "Russia's New Counteracting Terrorism Law: The Legal Implications of Pursuing Terrorists beyond the Borders of the Russian Federation," appears this year in the Columbia Journal of East European Law.

The value of this experience to students is almost incalculable. For those planning to practice law, it hones their research and writing skills. "It makes them better attorneys," Mandelker argues, "because they have gone through the process of perfecting their scholarship and their presentation of written concepts." For those interested in an academic career, it also introduces them to the publication process.

For all of them, Foster believes, "the skills they learn in researching and writing and honing an argument are invaluable, whether they're choosing government or academia or private practice."

The students agree. "This was the defining experience of my legal education," Bridge says. "It taught me how to critically examine my own arguments. Professor Foster was amazing in the way she kept challenging me."

And, of course, these accomplishments enhance their résumés. "I can think of at least five of my former students who have gotten jobs in part because of their success in publication," Foster says.

Nor is publication necessarily the end of the process for these young scholars. In some cases, they become so fascinated with their research that they want to continue to pursue their topics. Bryan Lammon, now clerking for Judge Edward Prado in the Fifth Circuit Court of Appeals in San Antonio, will join a law firm next year, but he also hopes to write more on judicial decision-making. Elizabeth McDonald, who graduated in May, is a litigation associate at Katten Muchin Rosenman LLP in Chicago, but eventually, she says, "I'd like to teach family law and continue writing articles about this area of the law. Writing this paper sparked my interest in pursuing a career in teaching and scholarship."

**Other Recent Student Scholarship**

In addition to those papers published by Seth Bridge, Noah Gold, Bryan Lammon, Elizabeth McDonald, Jason Plowman, Brett Rowan, and Jessica Wilson, a sampling of other recent student scholarship includes:


**Lauren Smith, JD ’10, “Alternatives to Property Tax Increment Finance Programs: Sales, Income, and Non-Property Tax Increment Financing,” The Urban Lawyer (2009)


Additionally, in 2008 and 2009, more than 50 Washington University Law students published notes in the school's three student-edited journals, the Washington University Law Review, Washington University Journal of Law & Policy, and Washington University Global Studies Law Review. Additional notes are forthcoming in fall 2009. Recent topics in these publications have ranged from parental leave legislation to RICO and ERISA, and from water rights and environmental law in China to fair housing and online roommate selection. They also span derivative claims and a daughter's risk of genital mutilation; shareholder disenfranchisement in corporate director elections; plea bargains and non-English-speaking defendants; generic pharmaceutical regulation in the United States and Europe; and rights to ancient shipwrecks in international waters.

For a full listing of recent student scholarship, visit law.wustl.edu/news/index.asp?id=7443.

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**Research Excerpt**

"This article explores ‘the Japanese advantage’ in the enforcement of ex ante contract commitments in comparison with the United States, arguing that ostensible convergence of Japanese and United States contract practice in ongoing business relationships is based on very different assumptions and conditions."

**John O. Haley, William R. Orthwein Distinguished Professor of Law**

"Rethinking Contract Law in Japan," Journal of East Asia and International Law
New Faculty

Washington University Law welcomes five outstanding new faculty members: Professors Scott A. Baker, Robert R. Kuehn, Mae C. Quinn, Hillary A. Sale, and Brian Tamanaha; Senior Professor of Practice Charles Burson; and Fellows Sarah Jane Forman and B. Don Taylor III. Their areas of expertise range from law and economics to environmental law, corporate law, juvenile justice, jurisprudence, law and politics, criminal law, and international law.

An expert in law and economics and in game theory, Scott A. Baker joins the faculty from the University of North Carolina (UNC). He also will have a courtesy faculty position in the Department of Economics in Arts & Sciences. While at UNC, he served as associate dean for faculty affairs, held a courtesy appointment as professor of economics, and received the McCall Award for Law School Teacher of the Year. At Washington University Law, Baker will be teaching Contracts and Torts during the fall semester, and Game Theory & the Law in spring 2010.

His co-authored work has appeared in the Journal of Law and Economics, the Journal of Law, Economics and Organization, and numerous law reviews. His scholarship includes a recent empirical study that compares judicial salaries to those of the next best financial opportunity for most circuit judges; the findings subsequently were published in Boston University Law Review. Baker is the recipient of a Tilburg University grant for studies in the law and economics of innovation. He received his bachelor’s degree from Miami University, JD from the University of Chicago, and PhD in economics from UNC. He clerked for Judge E. Grady Jolly of the U.S. Court of Appeals for the Fifth Circuit.

Robert R. Kuehn, a nationally recognized expert in environmental law and leading clinical professor, has joined Senior Lecturer Maxine Lipeles as co-director of the Interdisciplinary Environmental Clinic. President-elect of the Clinical Legal Education Association, he is the author of numerous publications, including Environmental Enforcement: Cases and Materials. Among his many articles are several that he co-authored with Professor Peter Joy. He will be teaching the Interdisciplinary Environmental Clinic during both the fall and spring semesters and Legal Profession in spring 2010.
Kuehn joins the faculty from the University of Alabama, where he served as professor of law and associate dean for skills programs. He previously was a professor at Tulane University, where he directed the Tulane Environmental Law Clinic. During his tenure there, the clinic was the first recipient of the ABA’s Award for Distinguished Achievement in Environmental Law and Policy and runner-up for the National Law Journal’s Lawyer of the Year Award. He also served as a trial attorney for the Environment and Natural Resources Division, U.S. Department of Justice; lead attorney on multidefendant civil enforcement actions brought on behalf of the U.S. Environmental Protection Agency; and a Special Assistant U.S. Attorney in Washington, D.C.

Kuehn received his bachelor’s degree from Duke University, JD from George Washington University, LLM from Columbia University, and MPH from Harvard University. He clerked for Judge James C. Hill of the U.S. Court of Appeals for the 11th Circuit and Judge Sidney M. Aronovitz of the U.S. District Court for the Southern District of Florida.

MAE C. QUINN, a rising star in youth advocacy and problem-solving courts, has joined Associate Dean Annette Appell as co-director of the Civil Justice Clinic. She formerly was a professor of law at the University of Tennessee, where she received the Harold C. Warner Teaching Award and a Woman of Achievement Chancellor’s Award. Quinn also has experience as a New York City public defender and as an associate for a prominent white collar criminal defense firm. At Washington University Law, Quinn will be teaching the Civil Justice Clinic both semesters and Criminal Law in spring 2010.

Her current research focuses on ethical and legal issues relating to the defense of the accused, in part comparing contemporary criminal court movements with those of the past and examining the associated role of women lawyers. Quinn taught as an E. Barrett Prettyman Clinical Fellow at Georgetown University and as an adjunct professor at the Benjamin N. Cardozo School of Law. She also helped oversee a project related to the implications of problem-solving courts for the Center for Court Innovation and has served as chair of the Juvenile Justice Committee, Tennessee Association of Criminal Defense Lawyers. She received her bachelor’s degree from State University of New York at Albany, JD from the University of Texas, and LLM from Georgetown University. She clerked for Judge Jack B. Weinstein of the U.S. District Court for the Eastern District of New York.

Renowned corporate law scholar HILLARY A. SALE will be installed in the coming year as the Walter D. Coles Professor of Law and will have a courtesy appointment at the Olin Business School. Sale joins the law school from the University of Iowa, where she was the F. Arnold Daum Professor of Corporate Finance and Law and received the University President’s Collegiate Teaching Award. At Washington University Law, she will be teaching Corporations during the fall semester and Securities Regulation in spring 2010.

Beginning in 2005, Sale joined the authors of the Securities Regulation casebook, John Coffee and Joel Seligman, former

First Senior Professor of Practice

Charles W. Burson is serving as the law school’s inaugural Senior Professor of Practice. The two-year, full-time appointment is for distinguished lawyers whose experience complements the law school’s mission and enriches the curriculum.

A member of the law school’s National Council, Burson has extensive professional experience and has taught at the law school previously as a visiting professor.

He was formerly executive vice president, general counsel, and secretary at Monsanto Company and served as counsel and chief of staff to Vice President Al Gore. Additionally, he served as Attorney General for the State of Tennessee, a delegate at the 1977 Tennessee Constitutional Convention, and a member and president of the Tennessee Board of Law Examiners. He received his bachelor’s degree from the University of Michigan, MA from Cambridge University, and JD from Harvard University. He will be teaching Corporations both semesters and Supreme Court & Presidential Elections: The Legacy of Bush v. Gore in fall 2009.

The law faculty also recently approved a four-year Professor of Practice designation for eligible members of the legal practice faculty.
HILLARY SALE

Washington University Law dean. She also is the author or co-author of numerous other publications. Corporate Practice Commentator recently selected two of her articles as among the “Top 10.” Sale is a member of the American Law Institute, ABA Committee on Corporate Laws, and the Association of American Law Schools Committee on Business Associations.

She earned both her bachelor’s and master’s degrees from Boston University and her JD from Harvard University. Sale clerked for Judge Richard S. Arnold of the U.S. Court of Appeals for the Eighth Circuit and practiced corporate law. Prior to attending Harvard, she held several advisory positions in Massachusetts government, including for the Office of the Lieutenant Governor, Massachusetts Municipal Association, and Special Commission on Tax Reform.

BRIAN TAMANAHASON April 14, 2009

Acclaimed jurisprudence scholar BRIAN TMANAHA will be joining the faculty in January 2010. He currently is the Chief Judge Benjamin N. Cardozo Professor of Law at St. John’s University, where he was named Professor of the Year and served as both interim dean and interim coordinator of new faculty scholarship. A prolific writer, Tamanaha is the author of numerous articles and six books, including his forthcoming book, Beyond the Formalist–Realist Divide: The Role of Politics in Judging. His scholarship has received numerous awards, and his various publications have been translated into Chinese, Japanese, Spanish, French, and Ukrainian.

At Washington University Law, he will teach Legal Profession in spring 2010. He also has taught and/or presented a number of high profile lectures at numerous organizations and universities, including at Columbia, Princeton, Leiden, and the University of Amsterdam, as well as at The Hague. His professional affiliations include serving as a member of the Board of Trustees of the Law and Society Association and as associate editor of the Law and Society Review. Tamanaha has served as legal counsel for the Micronesian Constitutional Convention; Assistant Attorney General for the Yap State, Federated States of Micronesia; and an assistant federal public defender for the District of Hawaii. He received his bachelor’s degree from the University of Oregon, JD from Boston University, and JSD from Harvard University.

New Faculty Fellows

Sarah Jane Forman  B. Don Taylor III

Two new faculty fellows have joined the law school this fall. Sarah Jane Forman is the first Clinical Faculty Fellow and B. Don Taylor III is the Cash Nickerson Fellow.

Forman, who received her bachelor’s degree from the University of Michigan and JD from Boston College, has worked as an associate specializing in trial practice and as a public defender. She also was a law clerk for both the Environmental Protection Agency and The Nature Conservancy, an intern with the Massachusetts Office of the Attorney General, and a legal assistant for The Rainforest Alliance. She will be teaching the Criminal Justice Clinic in spring 2010.

Taylor is serving as executive director of the Whitney R. Harris World Law Institute and working closely with Leila Nadya Sadat, Harris Institute director and the Henry H. Oberschelp Professor of Law. Taylor will be co-teaching Public International Law in fall 2009 and a War Crimes Seminar in spring 2010. He previously was a legal officer for the International Criminal Tribunal for the former Yugoslavia and a prosecutor. Taylor has taught on the law faculty of the VU University Amsterdam. He earned his BA from the University of Nevada, Las Vegas; JD from the University of Arizona; and LLM from Leiden University.

Additionally, Faculty Fellows Maggi Carfield and Jennifer Carter-Johnson, Visiting Fellow Leah Theriault, and Ambassador-in-Residence Thomas Schweich will all again be teaching at the law school this year.
DIDN’T GO TO LAW SCHOOL TO BECOME A LAWYER. I went to law school because I didn’t know what I wanted to do after college. At Grinnell, I had majored in history and thought that the only career I could pursue in history was teaching. If there was any occupation I had ruled out, it was teaching. Law school thus was a way to push the decision off for three years, while acquiring an education that would be useful in any number of productive careers. That it carried a deferment from the draft at a time the country was escalating its activity in Vietnam was a not-so-coincidental bonus.

As it turned out, I thrived in law school. I found the experience very challenging and stimulating—the most exciting educational process I had ever encountered. Studying law was, if you will, one big jigsaw puzzle, and I couldn’t get enough of it. Except for one little thing: I trembled at the thought of being called on. I wouldn’t dream of raising my hand, I usually sat in the back, and I tried to hide behind those in the rows in front of me. With that little exception, I loved everything about my first couple of years at Texas. From my teachers, I learned precise thinking; from my law review experience, I learned precise writing. And I really enjoyed the writing—much more than I had enjoyed producing the numerous essays and papers that I had to write at Grinnell.

I started looking forward to a career practicing law, and I lined up a summer job with a large Chicago firm. Then, late in my second year, I realized that my teachers had a very interesting career. They got to educate aspiring lawyers, and they got to pursue their scholarly interests to the point of exhaustion, without the kind of deadlines the law review imposed on me. And after my summer in Chicago, I understood that the time pressure exerted by the law review was nothing compared to the need for speed when a client awaits the answer. The idea of a career in teaching continued to grow, and I was fortunate to be offered the opportunity to teach here.

THAT’S HOW I GOT HERE. Why am I still here? That’s easy: I love it. I love the teaching, I love the law school, and I love Washington University. When I arrived, I was the 14th person on the faculty. My law school mentors had told me that the faculty at Washington University were outstanding teachers and scholars, extremely collegial, and helpful. They were absolutely correct. My colleagues here were incredibly supportive, available at all times to help with questions about teaching and scholarship. And they still are.

But what really sustains me are the interactions with students. I love working with the newly arrived first-year students in Contracts, introducing them to the methodology of the common law, helping them master case analysis, and improving their reasoning skills. It is alien to their prior experience to distill the story of a dispute down to its relevant facts, discarding information that is interesting, but not essential to the resolution of the dispute. It is alien also to have to capture the essence of a situ-
By Michael M. Greenfield

“The progress of students between the day they first walk into class and the day of the last exam is amazing.”

The precise analysis of a court’s opinion or a legal doctrine. No other intellectual activity compares to the stimulation of generating questions to enable a struggling student to take a progression of steps that enable him or her to arrive at an appropriate analysis of a court’s opinion or a legal doctrine. Developing hypotheticals, on the fly, to provide the key to the puzzle, is hard work. But it’s very rewarding work. The progress of the students between the day they first walk into class and the day of the last exam is amazing. To have a role in that progress provides tremendous satisfaction and pride.

The progress, of course, continues in upper-level courses, where my focus is helping the students develop the skills of statutory analysis. In addition to the substantive challenge, there is the challenge of engaging the interest of students for whom the law school experience is no longer fresh. I think that is why my scholarship in recent years has focused primarily on producing teaching materials for my upper-level courses.

Fortunately, teaching is not confined to the classroom. I am pleased when students approach me outside of class, to clarify matters about which they are uncertain, or even better, to probe questions more deeply than we did in class. At these times, new teaching opportunities arise, and the Socratic dialog can continue, without the anxiety on the student’s part of performing in front of others and without the concern on my part for time management in the classroom.

These are things that occur on a daily basis that explain why I continue teaching. But other aspects of teaching are very rewarding, too. I take great pleasure in seeing the activities and accomplishments of my students after they graduate, seeing them achieve positions of responsibility in their jobs and in their communities. I take pride in having played an admittedly small role in the development of the ability that helped them make those contributions.

Another part of the rewards of teaching is the personal contact after graduation. One of the most touching kinds of contact is the letter from a student from many years before, affirming the value of the experience in Contracts, even though he or she didn’t appreciate it so much at the time. Another—the best—is the friendship that begins in the classroom and continues after the semester and, indeed, after graduation.

And every fall it begins again. I have found the fountain of youth, and I am blessed.

Michael M. Greenfield is the George Alexander Madill Professor of Contracts & Commercial Law.
INTERNATIONAL CRIMINAL AND HUMANITARIAN LAW

Experts have been wrestling with issues related to crimes against humanity and composing the first draft of a proposed treaty, as part of an ambitious, two-year project. Leila Nadya Sadat, the Henry H. Oberschelp Professor of Law and director of the Whitney R. Harris World Law Institute, is heading the Crimes Against Humanity (CAH) Initiative, which is under the auspices of the law school’s Harris Institute.

During the past year, the experts gathered first at the law school and then at The Hague to address key aspects of the draft convention. The CAH Initiative will culminate with a global conference in Washington, D.C., in spring 2010 at which the final draft of the multilateral treaty will be discussed.

CAH Steering Committee member Richard Goldstone, former justice of the South African Constitutional Court and former chief prosecutor of the International Criminal Tribunals for Rwanda and the former Yugoslavia, notes that “while treaties exist to address genocide and war crimes—the Genocide Convention of 1948 and the Geneva Conventions of 1949 together with their Optional Protocols of 1977—there is currently no treaty on ‘crimes against humanity.’ The Crimes Against Humanity Initiative is designed to fill this important gap in international humanitarian law.”

William Schabas, Steering Committee member and director of the Irish Centre for Human Rights of the National University of Ireland, Galway, observes that the initiative addresses a significant omission in international law, namely the lack of an international treaty that sets out the obligations of States in terms of preventing and prosecuting crimes against humanity.

“Many obligations, such as the duty to cooperate in prosecution and extradition, and the responsibility to prevent the crime, are said to be enshrined in customary international law,” he says. “However, it is important to take such vague commitments a step further, and incorporate them into a binding treaty.”

The most recent gathering of the CAH Steering Committee and other invited experts and commentators was convened June 11–12, 2009 at Leiden University’s Campus Den Haag.

“The setting in The Hague facilitated the participation of leading judges and practitioners, including those from the International Criminal Court, International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda, Special Court for Sierra Leone, Khmer Rouge Tribunal, and Special Tribunal for Lebanon,” says Sadat, CAH Steering Committee chair. “The CAH Initiative’s Steering Committee benefited greatly from their counsel. Significant progress also was made on the specific language for the treaty draft.”

At the opening of the June session, J.J. van Aartsen, mayor of the City of The Hague, welcomed participants to the international city of peace and justice. He noted that it was “a great honor” for the city to host the meeting, and remarked in closing: “Where lawlessness and absence of rights prevail, people cannot live in peace. Where injustice goes unpunished, old conflicts keep flaring up again.”

THE CRIMES AGAINST HUMANITY INITIATIVE is guided by a blue-ribbon Steering Committee:

• Leila Nadya Sadat, chair;
• M. Cherif Bassiouni, the Distinguished Research Professor of Law and president emeritus, International Human Rights Law Institute, DePaul University;
• Ambassador Hans Corell, former United Nations Under-Secretary for Legal Affairs;
• Justice Richard Goldstone, former justice of the South African Constitutional Court and former chief prosecutor of the International Criminal Tribunals for Rwanda and the former Yugoslavia;

Whitney R. Harris, a former Nuremberg prosecutor, addresses an experts’ meeting.
Over the course of the meeting, panel discussions addressed the need for a crimes against humanity convention, the particular problems of enforcement, and the relationship between the proposed convention and the International Criminal Court. The meeting built on the progress of the experts’ session held in St. Louis in April 2009. Highlights of the April session included remarks by Clint Williamson, U.S. Ambassador-at-Large for War Crimes Issues; Whitney R. Harris, a former Nuremberg prosecutor; and Steven Cash Nickerson, JD ’85, MBA ’93, who is generously helping to fund the project.

In addition to hearing commentary from a wide range of experts, the Steering Committee at the June meeting held a technical advisory session on the draft treaty language. Gareth Evans, former Foreign Minister of Australia and current president of the International Crisis Group, delivered the keynote address. Evans movingly recalled his association as a student with young Cambodians, all of whom later died in the mass atrocities committed by Pol Pot’s regime. He noted that the memory of what must have happened to these young men and women haunts him to this day.

That experience, Evans says, is what makes him “intensely committed to the great enterprise on which this panel of experts is now engaged … to draft and secure the ultimate adoption of a new Convention on Crimes Against Humanity.” He observes that the treaty will “fill a gap that has all too obviously become apparent in the array of legal instruments available to deal with atrocity crimes, notwithstanding the emergence of the International Criminal Court.”

B. Don Taylor III, Harris Institute executive director and Cash Nickerson Fellow, says: “As a result of the invaluable input during the two experts’ meetings, we are attempting to incorporate into the draft convention not only the mutual legal assistance and extradition obligations necessary to make it a successful enforcement mechanism, but also to address other important considerations. These include capacity building, compliance inducement mechanisms, issues of state responsibility, and the responsibility to protect.”

For more information on the CAH Initiative, visit law.wustl.edu/crimesagainsthumanity.
The negotiation literature has long considered why people fail to reach mutually beneficial, or economically efficient, agreements. This failure has important implications for an overburdened legal system: when individuals fail to reach agreement, they often take their disputes into the legal arena. Many cases within the legal system do settle, but both short- and long-term failure to reach mutually beneficial agreements tax the system with ongoing case management. …

The behavior of lawyers may play a role in breakdowns in conflict negotiation. The “lawyer as shark” metaphor, although a caricature, reflects a widely held view that lawyers must be aggressive and tough in order to best protect their clients’ interests. Lawyers are trained and steeped in the adversary system. This system, with its duty of zealous representation, encourages attorneys to exalt their client’s interests while ignoring or denigrating those of their opponent. Indeed, the popular saying “nice guys finish last” reflects a general perception, not limited to the legal context, that treating others in a fair manner may be a display of weakness that will lead to personal loss.

In the context of being a lawyer, such weakness may be deemed unprofessional or even potential malpractice. But if acting fairly does not hurt, and perhaps even helps, one’s ability to represent his or her clients, then lawyers need not fear that fair treatment of an adversary is irresponsible. This article presents the results of two studies that suggest that legal conflicts might be more successfully resolved if lawyers paid greater attention to issues of fairness of process, or procedural justice, in legal negotiation.

IN A WORLD OF RATIONAL ACTORS and perfect information, negotiation outcomes would hinge only on the existence of an overlapping bargaining range between the parties. In the legal realm, the potential transaction costs of litigation would provide additional incentive for nearly all suits to settle. However, even though a majority of lawsuits do settle, a significant portion still result in costly litigation, and a much greater number settle only after incurring substantial transaction costs. …

Individuals’ motivations play a critical role in understanding why legal negotiations often fail to yield settlements, or settlements earlier in the life of a legal dispute. Individuals have strong instrumental motivations—they want to achieve goals that match their preferences regarding the resolution of the dispute. Typically, these are goals that will maximize their own allocation of resources. Negotiation literature has suggested that negotiation failures happen, in part, because the desire to maximize gains and minimize losses leads individuals to act in ways that prevent mutually beneficial agreements from occurring. …

Research on the psychology of negotiation, however, has suggested that an exclusive or central focus on individuals’ motivations to maximize gain and minimize loss may miss an important part of the picture. This body of research conceptualizes individuals not as would-be rational actors led astray by their own cognitive mistakes, but rather as complex actors motivated by social concerns, and influenced by affective processes and cultural norms. Fairness motivations have also been considered… but fairness research relating to negotiated conflict has focused predominantly on outcome fairness, or distributive justice, with only limited attention given to the role of fairness of process, or procedural justice, in negotiation.

Research on procedural justice in psychology has produced a robust set of findings suggesting that individuals are motivated by concerns about the fairness of the process by which decisions are made, and that people place a high value on the fairness of the process by which decisions are made and on the fairness of the treatment they receive from others. Procedural justice research has shown that people care not just about maximizing
The results of these two studies suggest that increased levels of procedural justice may encourage the acceptance of negotiated agreements.

In Study 2, high levels of procedural justice led to higher joint outcomes, and also led to outcomes in which the results were more equally divided between the parties. Higher levels of procedural justice were also linked to a higher likelihood that information was disclosed that could lead to the opportunity for value creation; these results suggest that procedural justice facilitates an expansion of the negotiation pie by encouraging the requisite information disclosure.

The participants in this study were first-year law students. The students were enrolled in a required law school class within which they participated in a negotiation exercise that included a simulation of a negotiation between two attorneys. In this exercise, each student was randomly assigned a role as a lawyer for either a homeowner or a contractor in a dispute over a building contract.

Regression analyses [in both studies] indicated that people were more willing to accept the agreement and were less interested in moving forward to arbitration if they rated their negotiation as procedurally fair. ... The analysis indicates that procedural justice had an influence beyond that of outcomes, but it does not directly compare the magnitude of that influence, so it does not show that procedures are more important than outcomes. However, the influence of procedures is distinctly important, and significantly so.

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A Theory of Judicial Power and Judicial Review

Judicial review has long been characterized by constitutional scholars as countermajoritarian and antidemocratic. This article employs insights from political science and game theory to argue that the opposite is true: judicial review supports popular sovereignty by mitigating the principal–agent problem that lies at the heart of democratic government.

In a system of constitutional government premised upon popular sovereignty, the government acts as the agent of the people and is supposed to exercise power consistent with the terms and conditions imposed by the people in the form of a constitution. But the interests of principal and agent may diverge: those entrusted with public power may seek to seize more power than has been given them or to turn the power they have been given against the people themselves. The people thus face the challenge of asserting effective control over a potentially treacherous government, and they cannot meet this challenge without first overcoming two potentially serious obstacles.

One is an information problem: the people cannot respond to bad behavior by the government if they remain unaware of that behavior. Another is a coordination problem: even if the people acting together are capable of replacing the government, such action may require widespread coordination that can be difficult to achieve.

Courts that engage in judicial review perform monitoring and coordinating functions that help the people to solve both of these problems. First, a court engaged in judicial review serves the function of a whistleblower or fire alarm: it provides the people with reliable, low-cost information about whether their government has overstepped the bounds of its delegated power. Second, courts can coordinate popular action against usurping governments. People are unlikely to act openly against a tyrannical government unless they believe that others will act as well. They are, therefore, in need of a highly public signal that creates such beliefs on a large scale.

A court can provide such a signal by ruling publicly against the government. The fact that constitutional courts perform monitoring and coordinating functions helps, in turn, to solve the puzzle of why governments obey them, notwithstanding the fact that they lack the power of either the purse or the sword. The ability of a court to mobilize the people against the government means that government disobedience of the court’s decisions carries potentially severe consequences.

This account has important empirical implications that directly contradict the conventional wisdom about the purported relationship between judicial legitimacy and judicial power. In particular, it is often thought that courts jeopardize their legitimacy, and thus their power, by rendering unpopular decisions. The theory proposed here suggests, however, that the opposite may be true. When a court renders an unpopular decision that nevertheless receives widespread compliance, it generates and reinforces strategic expectations about its efficacy in future cases.

Thus, the successful exercise of judicial power in the face of opposition or criticism merely begets even more judicial power. The theory also helps to explain both judicial independence and public support for the courts in the face of decisions that may sometimes defy the wishes of a majority: because constitutional courts perform a watchdog function, the people have reason to support their independence even if specific judicial decisions happen to be unpopular.

* * *

Part I of this article sets forth the principal–agent problem that lies at the heart of any government premised upon the notion of popular sovereignty. It illustrates the problem by positing a hypothetical state of nature in which people have much reason to institute a government, but also have reason...
to fear that any government to which they delegate power may betray them. In this scenario, the introduction of a judicial body reduces the risk of such betrayal and reinforces popular control over the government. Parts II and III argue that constitutional courts with the power of judicial review perform monitoring and coordinating functions that both ameliorate the principal-agent problem and create incentives for the government to comply with judicial decisions. …

Part IV of this article discusses a counterintuitive implication of a coordination-based account of judicial power. Conventional wisdom suggests that courts secure compliance with their decisions by drawing upon their store of legitimacy, which is undermined by decisions that are unpopular, controversial, or lack intellectual integrity. [In fact,] precisely the opposite is true: an unpopular or unpersuasive decision can, in fact, enhance a court’s power in future cases, as long as it is obeyed. Widespread compliance with a decision that is controversial, unpopular, or unpersuasive serves only to strengthen the widely held expectation that others comply with judicial decisions. This expectation, in turn, is self-fulfilling: those who expect others to comply with a court’s decisions will find it strategically prudent to comply themselves, and the aggregate result will, in fact, be widespread compliance. …

PART V EXPLORES the practical implications of the theory for judicial independence and the extent of popular support for the courts. It does so by modeling judicial review by an independent court as a game of strategy played by the government, the court, and the people. This analysis yields three predictions. First, if the theory is correct that constitutional courts facilitate popular control over the government by performing monitoring and coordinating functions, would-be tyrants have an incentive to undermine their independence for the same reasons that a would-be arsonist might seek to disable a fire alarm.

Second, because people know that would-be tyrants have an incentive to undermine judicial independence, they will support the independence of the courts from the government, and they will further construe an attack upon the courts as a warning sign of potential usurpation. Third, to the extent that judicial review performs monitoring and coordinating functions that bolster popular control of the government, the people have a rational incentive to support judicial independence, even if the courts do not always adopt policies that are preferred by the majority.

The article closes by urging a new research agenda for constitutional scholarship—one that moves beyond the countermajoritarian dilemma to questions deserving of greater attention. … Why do people obey courts? What functions do courts perform, and to whose benefit? Why do government actors comply with the decisions of constitutional courts? What, if anything, can such courts do to augment their power? For what reasons might citizens and governments alike not merely tolerate, but even encourage, the growth of judicial power? Under what conditions can constitutional courts and judicial review actually succeed at setting limits upon the state, or at protecting rights from infringement? To what extent, if any, does constitutional adjudication facilitate the expression and resolution of social and political conflict?

There is no good reason why constitutional scholarship should give short shrift to such fundamental questions of “who gets what, how, and why.” Perhaps it is optimistic to imagine how the field of constitutional theory might look if it were to outgrow its preoccupation with the supposedly countermajoritarian character of judicial review. But it is time for the wheel to turn. 

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A lifetime interest in the cultures and politics of other countries drives the thriving immigration practice of Rochelle A. Fortier Nwadibia, JD ’84, who has won landmark asylum cases. Although she studied in France and conducted research on Africa, she says she “never envisioned” that she would end up representing international clients on such high-profile issues.

Alumna’s Practice Ensures Rights of Immigrants

By Kenneth J. Cooper, AB ’77
HER FAMILY BACKGROUND AND EXPERIENCE

Growing up in San Francisco and Los Angeles, Nwadibia met the international visitors who flowed through her family’s home, invited by her father, a Pentecostal bishop inclined to missionary work. His United Holy Church financed a school in Liberia. “I was always drawn to cross-cultural experiences,” says Nwadibia, the Nigerian name of her former husband. “My father was very political. We were always talking about global issues, human rights issues.”

Hers is also an immigrant family: Before the Civil War, her paternal great-great-grandfather relocated from the French Caribbean colony of Martinique to New Orleans. That side of the family wound its way through Texas into Mexico before her great-grandfather landed back in the United States, reaching California near the end of the 1800s.

As an undergraduate, Nwadibia spent two years as an exchange student in France, mastering French and tutoring in the law near Marseille. There she came to know many students from Francophone Africa. That experience and exposure to France’s passionate, multiparty politics led her to pursue a master’s in international affairs at Columbia University. Nearing completion of those studies in the early 1980s, Nwadibia decided a law degree was a practical career path. “International affairs was really just emerging then outside diplomatic service,” she recalls.

THE SUMMER BEFORE entering law school, Nwadibia did research about governance in Africa for a group of law professors who were acquainted with A. Peter Mutharika, now the Charles Nagel Professor of International and Comparative Law.

Nwadibia took Mutharika’s course on international trade law and helped with his research on the stateless condition of black South Africans, whom the white minority government of the day declared citizens of new “homelands,” which lacked international recognition. “Washington University was a really great experience because of my ability to work with Professor Mutharika,” she says.

After graduating, she briefly taught African politics to undergraduates at the University before holding a series of government jobs in St. Louis, while raising three children. She also was appointed a volunteer member of the Missouri Commission on Human Rights and served on the board of the United Nations Association’s St. Louis chapter.

Her legal experience and work on international issues, including at the law school with Mutharika, came together in the immigration practice beginning in 1999.

Besides asylum petitions, Nwadibia handles family reunification, employment, deportation, and appellate cases. Initially, most clients were French-speaking Africans. Lately, she has seen an increase in Mongolians, particularly women subjected to spousal abuse, an emerging area of asylum law. “The best of all worlds is working with the law and international issues,” Nwadibia says. “I get a chance to step inside the world where my clients live and help improve their lives.”
Working on the frontlines of environmental regulation compliance, Mike Ford, JD/MS ’95, counsels business clients not to let down their guard due to the down economy. Cost-cutting on environmental compliance and related legal counsel can be extremely costly to companies—and even fatal—as the new administration ramps up enforcement.
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STRONOMICAL...STRATOSPHERIC...Start adding zeros...” That’s how law alumnus Mike Ford describes the potential liabilities for corporate noncompliance with extraordinarily complex environmental protection laws. “The government’s leverage is huge and can have a severe impact on the ability to stay in business,” says Ford. “A lot of people don’t understand that.”

But Ford is working to increase understanding of and compliance with multilayered federal, state, and local environmental laws among his corporate and pro bono clients at the Phoenix office of Bryan Cave LLP. He also strives to educate other businesses, attorneys, and officials about environmental issues via numerous publications in Environmental Law Reporter, Journal of Environmental Management, Arizona, and other journals, and through lectures to business, legal, and environmental groups.

“We have the most comprehensive and complicated environmental regulations in the world,” says Ford, “so the biggest challenge is first knowing what compliance means. Often this confounds even the regulators. With federal, state, and local compliance issues—and with overlapping laws—emissions and discharges could be subject to any number of regulations.”

Ford, a Bryan Cave partner, also helps clients with enforcement defense when environmental regulators bring actions, providing litigation support and, in most cases, negotiating a settlement.

THE ST. LOUIS NATIVE also provides environmental counsel in real estate transactions. “The potential liabilities are enormous and often unforeseen, so it’s prudent to do appropriate due diligence before acquiring commercial or industrial property,” says Ford. When properties with environmental issues change hands, he works to allocate the risks and liabilities between buyer and seller.

Such “brownfield developments” represent a complex portion of his practice—from project feasibility analysis to participating in voluntary cleanup programs to obtaining environmental insurance and regulatory approval. But brownfields often present a potential Pandora’s box for owners, says Ford: “There are large incentives not to deal with a contaminated site because you don’t know what you’re going to open up.”

Which is what happened to a group of Franciscan Friars in what Ford calls “the most fulfilling case in my short career.” The case was the subject of a 2007 front-page Wall Street Journal article, “Friars Who Owned Polluted Mine Get All Sorts of Help: Prayer and a Good Lawyer; They Risked Costly Fines Over Arizona Toxic Waste.”

The Friars inherited partial ownership of the Gibson Mine in Gila County, Arizona, 70 miles east of Phoenix, in 1970. Copper miners had leased the site sporadically since the 1900s, but the operations were halted by regulators in the 1990s. Then, in 2003, the state threatened to sue the Friars over acidic, metal-bearing runoff from the abandoned mine facilities into a nearby creek. The Friars, who take a vow of poverty and follow the teachings of St. Francis of Assisi (who professed man’s kinship with the land), could not bear the millions of dollars needed for cleanup. Yet, says Ford, “They had a desire to do what they could for the environment, as St. Francis had.”

Ford stepped in to organize a solution for his pro bono client. He urged the Friars to take full responsibility to gain maximum leverage in negotiations with various state and federal regulatory agencies and persuaded the other owners to donate their shares to the Friars in exchange for being let off the environmental cleanup hook. He got other Bryan Cave clients, including another mining company and a metal recycler, to pitch in on the $2.2 million project. Ultimately, the Friars hope to recoup their share of the cleanup expense by selling the decontaminated land for development.

Such copper mining issues are abundant in Arizona. “Copper mining is a cyclical business dependent on market prices,” Ford says, which historically has led to environmental problems in Arizona and other Western states. The EPA says some 100,000 abandoned mines of various sorts there pollute 40 percent of streams.

FORD’S RAPID RISE in the ranks of environmental law got a jumpstart thanks to his dual Washington University degrees—a JD combined with an MS that focused on environmental issues from the School of Engineering & Applied Science. That enabled him to focus immediately on environmental law when he first joined Bryan Cave at its St. Louis headquarters.

“It gave me a leg up. I hit the ground running when most associates are searching about for their niche,” he recalls. “I went to work right away in the firm’s environmental group.”

In the ensuing years, Ford has written and lectured on renewable energy incentives, water quality, real estate due diligence, brownfields liability, redevelopment of contaminated property, and the impact of climate change initiatives on business. He recently was elected 2009 vice president of the Phoenix chapter of the Academy of Certified Hazardous Materials Managers (ACHMM), having previously served as president.

Ford says he first became interested in environmental law when taking a survey course during his second year of law school, and got involved in the Environmental Law Society, where he learned of the joint-degree program.

“It’s a great program, and I highly recommend it,” says Ford. “I have no shortage of good things to say about Washington University. The quality of teaching was, in my estimation, far superior.”

He also gives ample credit for his preparation to Maxine Lipeles, senior lecturer in law and co-director of the law school’s Interdisciplinary Environmental Clinic, and Michael Cannon, adjunct professor of law and the University’s executive vice chancellor and general counsel, with whom he studied environmental insurance coverage.

He calls Lipeles “a great mentor who really encouraged me to pursue environmental law,” and says Cannon “manifested a true concern for students and the subject matter.”
WASHINGTON UNIVERSITY

The two-day conference featured a diverse group of experts in the areas of economics, law, political science, and public policy from universities around the country, as well as government officials, policymakers, and professionals from the Brookings Institution, Concord Coalition, and Heritage Foundation.

“The interdisciplinary conference was designed to bring together budget experts from a variety of professional backgrounds,” says Professor Cheryl Block, the conference’s primary organizer. “Several participants reported that it was one of the best conferences they have attended because it enabled them to engage with other experts in the field with whom they do not ordinarily meet.”

The opening keynote presenter, Professor Allen Schick of the University of Maryland’s School of Public Policy, spoke on “Budgeting for Economic and Fiscal Crises.” Block adds: “He wrote what I consider to be one of the best academic books on the federal budget, so we were pleased that he agreed to be the opening speaker.”

Block also reports being delighted to have Alice Rivlin, Senior Fellow in Economic Studies at the Brookings Institution, deliver the keynote luncheon address: “Budget Deficits: The Future is Now!” Rivlin was the founding director of the Congressional Budget Office. She also has held numerous important government positions,

“Despite several decades of serious attempts to use program budgeting, benefit/cost analysis, cost-effectiveness analysis, and other economic-type approaches to budgetary preparation and review, I feel obliged to report that we have failed to come to grips with the basic question of budgeting: ‘Would an extra dollar (a billion, in the case of the federal government) be more wisely spent for Program A or for Program B?’”

Murray Weidenbaum
Edward Mallinckrodt Distinguished University Professor, Department of Economics, Arts & Sciences, Washington University

“The effect of intense disagreement between particular congresses and presidents is most obvious. More subtle but almost as pervasive is the failure of the public sphere to recognize that policies about details are as legitimate as policies about totals, and that the two need to be adjusted to each other.”

Joseph White
Luxenberg Family Professor of Public Policy; chair, Department of Political Science; Professor of Epidemiology and Biostatistics; and director, Center for Policy Studies, Case Western Reserve University

“When normal budgeting is applied to extraordinary times the outcome is likely to be inadequate. Yet what might be prudent in the face of crisis might become a precedent when the crisis abates. Crisis budgeting is important because adjustments made under stress shed light on how the process works in both ordinary and frenzied times. Moreover, crisis budgeting is likely to leave a lasting imprint that will affect political and administrative practices after the special circumstances have passed.”

Allen Schick
Distinguished University Professor of Public Policy, University of Maryland

“The nation is currently facing a double budget crisis—an immediate recession and an economy and a financial sector that is ballooning the deficit. I think the test of whether our democracy is going to work in this situation is whether we can keep two things in our heads at once—whether we can fix the current crisis and take immediate action that will help reduce the long-term deficits at the same time. I actually think we can.”

Alice Rivlin
Senior Fellow in Economic Studies, Brookings Institution
By Laura Miller

the current economic crisis became clear,” Block recalls. “It was before the election, before we knew Obama would be president, before the bailout legislation, and before the announcements of extraordinary deficits.

“From that first contact to the actual conference date, it was as if the world had turned upside-down. The conference couldn’t have been more timely,” Block adds.

Murray Weidenbaum, the Edward Mallinckrodt Distinguished University Professor at Washington University, delivered opening remarks for the second day of the conference. Weidenbaum began by recalling his experience working for the U.S. Bureau of the Budget more than half a century ago.

“I was assigned a miscellaneous array of activities which ranged from the civil functions of the Army Quartermaster Corps to the Interior Department’s Office of Territories and Island Possessions,” he said. “To the surprise of my more senior colleagues, I thrived on that supposedly unrelated array of functions and issues, learning the nuts and bolts of the federal budgetary process.

“In retrospect, that was useful knowledge to draw upon when I served on the three-man group that developed the Reagan Administration’s budget cuts,” he continued. “It is in the same positive spirit that I approach this morning’s (conference) assignment, which I interpret as introducing an array of interesting, but quite diverse aspects of federal budget policy.”

The conference also included remarks from Kent Syverud, dean and the Ethan A.H. Shepley University Professor, as well as five panels and roundtable discussions. Washington University Law Professors Block, Adam Rosenzweig, and Peter Wiedenbeck were among the commentators. Block is serving as the editor of a book on the conference proceedings, which will include her paper on measuring bailout costs.

For more information and to view a video of the conference, visit the Web site: law.wustl.edu/centeris/index.asp?ID=7086.

““We are looking at difficult short-term challenges on top of our long-term difficult challenges. … The public is ready for a bipartisan approach and they are really tired of polar opposites screaming at each other. Given the facts and a clear explanation of the problem, the public really doesn’t flinch from making difficult choices.”
Stuart Butler
Vice president, Domestic and Economic Policy Studies,
The Heritage Foundation

“A reasonable assessment of the relative costs of different federal bailout approaches is essential to enable legislators, administrators, and regulators with substantial decision-making authority to make wise policy choices about the best use of resources. Recognition and estimation of ways in which certain government actions impose hidden bailout costs is also important for an informed allocation of resources.”
Cheryl Block
Professor, Washington University Law

Cheryl Block, Washington University Law

Murray Weidenbaum, Washington University

Alice Rivlin, Brookings Institution

Allen Schick, University of Maryland
Admissions Office Goes Green

At a university that is putting forth considerable efforts to be environmentally conscious, Washington University Law is leading the way in "green" admissions practices. In committing to a paperless application process, the Admissions Office also saved a major portion of its budget in 2008–09.

“We receive close to 4,000 applications a year, and they used to all come in paper form,” says Janet Bolin, associate dean for admissions and student services. “Not only did that mean a lot of paper was being used, but somebody in our office had to file it. We would have stacks and stacks of paper that all had to be processed. With our new online system, it’s done so much more easily.”

The law school is using admissions software accessed through the Law School Admissions Council (LSAC) Web site. The process is much more streamlined. Instead of mailing in an applica-

Law Students Focus on Environment, Sustainability

Five Washington University Law students have taken the school’s environmental policies into their own, carbon-reducing hands. Elizabeth Fehder, Tobias Gillet, Jennifer Mansh, Theresa Mohin, and David Sokol form the Sustainability Committee, which is part of the Environmental Law Society.

“These students devote tremendous time, energy, and creativity toward helping our law school reduce its carbon footprint,” says Maxine Lipeles, co-director of the Interdisciplinary Environmental Clinic and senior lecturer in law. “They started with the first step of upgrading the school’s recycling program and encouraging students, faculty, administrators, and staff to participate. With their energy, and Dean Kent Syverud’s strong support for this initiative, I look forward to bigger and more substantial changes in the months and years ahead.”

Now a second-year student, Sokol became involved with the Sustainability Committee when he noticed a surprising lack of sustainable practices in St. Louis compared to the San Francisco Bay Area where he had lived the previous year.

“I have always been an avid backpacker and climber, and so I have a natural concern for the environment,” Sokol says. “Following several law student events in which hundreds of cans were thrown in the trash due to a lack of adequate recycling bins, I decided to get involved. I learned of the newly formed Sustainability Committee and asked to join.”

The students’ efforts came at a time when the law school was considering environmental and sustainability practices as part of its strategic plan. The law school also asked to be included in the University’s energy audit, which is being conducted by Tao & Associates, of a number of campus facilities—a measure the students strongly support.

While the law school had been promoting recycling, the group discovered that containers were not always in convenient places or in enough supply, and were often inconsistently labeled. Additionally, there was a fair amount of confusion about what could be recycled. The group lobbied for additional recycling containers; made presentations to students, faculty, and staff; and created and posted recycling and sustainability guidelines on the Web site at law.wustl.edu/recycling. They also distributed...
Law students in the Advanced Legal Research class are using some of the latest digital technology in the form of “wikis”—to both enhance the collaborative learning experience and better prepare for the practice of law in a world shaped by social media.

Last spring, Philip Berwick, associate dean for information resources and senior lecturer in law, and Aris Woodham, director of Web services and lecturer in law, began having students in their co-taught course submit assignments using the wiki technology. The Web-based collaborative tool enables multiple people to edit a single article or document.

“Wikipedia, an online encyclopedia where anyone can edit the contents, is a well-known example of a wiki,” Berwick says. “In our Advanced Legal Research class, law students use wikis to create individual and group pathfinders, which are traditional legal research documents that explain how to approach research on certain topics. In addition to the ease of shared editing capabilities, another advantage is that on the wiki, as opposed to a paper copy, the students can provide links to additional online resources.”

Law student Michael Schwalbert found the use of the wiki enhanced the research course, which, overall, he says was extremely useful. “As lawyers, especially young lawyers, we will rarely know the answer to tough legal questions. The art is knowing where to look, or at least having an idea of where to look. Perfecting that art takes practice, and creating the wiki was definitely good practice.”

Aside from being environmentally friendly, the transition from paper to electronic assignments mimics the current trend toward the use of the Web as a communications tool in a variety of circumstances, Woodham observes.

“It has a useful place in teaching legal research, particularly if you want students to work in a group,” she notes. “By their very nature, most legal documents need to be edited by multiple people. Especially for our current students, familiarity with this kind of social-media, collaborative technology—using digital forums, both private and public—is critical since it is part of how the practice of law is evolving.”

Woodham and Berwick say they plan to use wikis in their course again in spring 2010. “The students did a great job employing this tool,” Woodham says. “We’d like to use it again in our course and make it available to other faculty members.”
A NEW ACADEMIC PARTNERSHIP between the Brookings Institution and Washington University is already paying dividends for the law school with the first Brookings summer internships and expanded offerings for the Congressional and Administrative Law Program.

This past summer, Ryan Kusmin and Anna Ulrich, now second-year law students, served as the law school’s inaugural Brookings Institution Interns, working on various public policy projects. This fall, Pooja Kadakia, JD ’09, also will intern at the Washington, D.C.-based think tank.

“I felt incredibly lucky to be brushing shoulders on a daily basis with some of the world’s leading political scholars and journalists,” says Ulrich, who was assigned to a research project aimed at improving media coverage of education reform issues. “I came to law school hoping to pursue a career in education policy, and this past summer I had the incredible opportunity of researching education reform issues for the leading policy organization in the country.”

Last spring, the University announced the alliance with Brookings Institution, which is designed to facilitate joint programs in Washington, D.C. The Brookings Institution is known for its stature as a nonprofit, public policy organization that conducts high-quality, independent research and provides innovative, practical policy recommendations.

As a result of the partnership, the law school already is enhancing its programs in Washington, D.C., including expanding its longstanding Congressional and Administrative Law Program to year-round offerings. The law school community also will have access to a new speakers series, scholar-in-residence exchange program, and faculty collaboration on research projects.

Kent Syverud, dean and the Ethan A.H. Shepley University Professor, has taken a leading role in developing University opportunities in Washington, D.C., and is serving as the new associate vice chancellor of Washington, D.C., programs, in addition to his ongoing role as dean and professor.

“The new alliance with the Brookings Institution offers the law school an exceptional opportunity to build on our existing, strong D.C. programs,” Syverud said. “It will allow us to expand our presence in Washington, a city of particular interest to our students, faculty, and alumni.”

Other highlights of the Brookings–University academic partnership include the Olin Business School assuming management of the Brookings Institution’s executive education activities and the creation of a jointly funded venture capital fund to support programs and initiatives.

The partnership between the Brookings Institution and Washington University could be considered a reunion of old friends. Turn-of-the-last-century St. Louis businessman Robert S. Brookings (1850–1932) both founded the D.C.-based think tank and, as leader of Washington University’s governing board for 33 years, laid the foundation for the University to become the world-renowned institution it is today.

After helping to found the Institute for Government Research (IGR), the forerunner of the Brookings Institution, in 1916, Brookings established the Graduate School of Economics and Government in Washington, D.C., as part of the University in 1923. It became independent of the University in 1924, and in 1927 was combined with IGR and a third organization to become the Brookings Institution.
Two of the most elemental questions in the field—“What is the law?” and “What is good law?”—inform the legal scholarship of Gerrit De Geest, professor of law and the new co-director for the Center on Law, Innovation & Economic Growth. He considers these fundamental issues regularly, he says, because they are at the center of his combined interest in the disciplines of comparative law and of law and economics. The answers have increasing value in a world that is becoming ever more interconnected legally and economically, and they bear on entrepreneurship, growth, and innovation.

Educated in Belgium and on the faculty of Utrecht University in the Netherlands before being recruited to the Washington University Law faculty in 2007, De Geest brings an uncommon level of personal experience to his work in comparative law. He is a member of the Economic Impact Group of the Common Principles of European Contract Law and past president of the European Association of Law and Economics.

Putting the relationship between a country’s laws and its economic vitality in the simplest terms, De Geest observes: “Good law leads to development, innovation, and prosperity.” Economists were largely responsible for early work in the field, beginning with Adam Smith’s An Inquiry into the Nature and Causes of the Wealth of Nations and with the recognition of better law in countries where development occurred successfully. But in the last 10 to 20 years, De Geest says, an explosion in comparative law has had legal scholars asking “What is the best law?” and looking at the answers devised by the countries of the world.

“This used to be a question answered by intuition, but the application of scientific analysis has made it a much more rigorous field,” he says. In order to effectively advise politicians and the courts about what makes a good decision, investigations proceed down two avenues, De Geest says. Theoretical answers are intellectual exercises that compare what exists to the optimal situation. More complicated, empirical answers take into consideration a comparison of costs to benefits. “Here,” De Geest says, “consensus gets lost.” For example, he points to the contentious questions of protection of intellectual property and whether it has gone too far. “What blocks development, and what stimulates it?” he asks.

The law has been slow to adopt an international focus when compared to other disciplines such as science and medicine, De Geest says, in part because legal systems differ so drastically in their practical application. “But it’s an international world,” he says, commending Washington University Law for its ability to see the importance of thinking globally. Also noteworthy, he says, is that students have international interests that the school must meet, and many entrepreneurial efforts and legal transactions ultimately will have international implications.

De Geest’s work, begun at Utrecht University and continued here—notably with the upcoming publication of the second edition of his Encyclopedia of Law and Economics—connected most appropriately with what was formerly known as the law school’s Center for Research on Innovation & Entrepreneurship. Discussions of his participation in the center led eventually to his appointment as co-director with Charles R. McManis, the Thomas and Karole Green Professor of Law and a noted international expert on intellectual property.

Shortly thereafter, the name of the center was changed to the Center on Law, Innovation & Economic Growth (CLIEG). McManis explains: “With four years of accumulated experience to build on, the end of the Ewing Marion Kauffman Foundation seed grant, and the encouragement of the University-wide Skandalaris Center for Entrepreneurial Studies, the original center has transformed into the Center on Law, Innovation & Economic Growth. The new name more accurately reflects the research mission of the center henceforth, and, in particular, highlights Professor De Geest’s interest and expertise in comparative law and economics.”

De Geest also thinks the name change will help to “let the world know about the work being done here and bring applicable disciplines together.” He adds: “It will focus our efforts and help us recruit talent, pointing out Washington University Law’s awareness of global thinking.”
Professor Marion G. Crain firmly believes in the importance of work in our culture, as well as in the fundamental influences of law, politics, and economics on the work experience. At her chair installation as the Wiley B. Rutledge Professor of Law on March 30, 2009, she delivered an address on “Work Matters.”

“Work lies at the core of the American dream,” noted Crain, an expert in labor and employment law. “Our cultural belief is that if you are willing to work hard, your family will be secure. Work is also the means for achieving a social and economic condition that is better than that of your parents, and to ensure, hopefully, that your children have a better life and more opportunities than you had. That is what we believe about work in this culture. Of course, work can also be a burden. In the famous words of Studs Terkel … work can be a ‘Monday through Friday sort of dying, a violence to the spirit, as well as to the body.’ Not for everyone, but for some cadre of persons.”

Crain focused on the law that ordinary citizens encounter at work and the many definitions of work. She examined the positive sides of waged work and its associated benefits, including economic self-sufficiency, health insurance, retirement plans, security, dignity, standing, belonging, membership in the social structure, and participation in democracy.

“Work is more than a market transaction of labor for dollars,” she said. “It is how we create and perform our identities in the world—how we assert our membership in the larger communities to which we belong: economic, cultural, and political.”

Additionally, Crain quoted her students’ views on work, discussed the impacts of unemployment, and noted the “fundamental disconnect” between the law and employees’ notions of work. She criticized the “at will” rule in employment and called for a Constitutional right to work; the implementation of work-spreading measures when the economy falters; and better notice periods, severance pay, retraining, and transitional assistance.

Crain’s endowed professorship is named for Rutledge, who served as the law school’s dean and a U.S. Supreme Court Justice. Before his deanship from 1931 to 1935, he was a beloved law professor. As a former student remembered years later, Rutledge made everyone in his classes understand that the “law’s ultimate goal is to produce fairness instead of advantage in its application.”

Kent Syverud, dean and the Ethan A.H. Shepley University Professor, said many parallels exist between Rutledge and Crain. He referred to Rutledge’s authoritative biography, by John Ferren, titled: Salt of the Earth, Conscience of the Court, and observed:

“Marion Crain’s scholarship and teaching is animated by a passion for justice, rigor in analysis, and a healthy seasoning of the down-to-earth knowledge of how real people work and live.”

Before entering teaching, Crain clerked for Judge Arthur L. Alarcon of the U.S. Court of Appeals for the Ninth Circuit. During the chair installation, Alarcon gave opening remarks, referring to Crain’s talents as a law clerk and her now national reputation as an expert in her field.

Crain’s scholarship examines the relationships among gender, work, and class status, with a particular emphasis on collective action. She is the co-author of two textbooks, Labor Law: Cases and Materials and Work Law: Cases and Materials, and is the co-editor, with Sen. John Edwards, and Arne Kalleberg, the Kenan Distinguished Professor at the University of North Carolina (UNC), of Ending Poverty in America: How to Restore the American Dream.

As part of her commitment to legal education, Crain serves on the executive committee of the Labor Law Group, an international collective of law professors dedicated to advancing pedagogy and scholarship on labor and employment law. She also is a past chair of the Association of American Law Schools Section on Labor and Employment Law. Crain serves on the editorial board of the Employee Rights and Employment Policy Journal, a peer-reviewed journal focusing on labor and employment law.

A dedicated teacher, Crain was selected by the student body as the David M. Becker Professor of the Year in 2009, following her first year on the faculty here. Formerly the director of UNC’s Center on Poverty, Work and Opportunity, she will become the director of Washington University Law School’s Center for Interdisciplinary Studies in January 2010.

Chancellor Mark Wrighton congratulates Marion Crain on her installation as the Wiley B. Rutledge Professor of Law.
Peter Joy Named Vice Dean

PETE R A. JOY, professor of law and former director of the Trial and Advocacy Program, will become vice dean on January 1, 2010.

Joy is well known for his work in clinical legal education, legal ethics, and trial practice. He serves on the Association of American Law Schools (AALS) Committee on Academic Freedom & Tenure, the AALS Section on Professional Responsibility's Executive Committee, the ABA Section on Legal Education & Admissions to the Bar Accreditation Committee, and the Society of American Law Teachers Board of Governors.

"Peter is extraordinarily well positioned by accomplishments, training, talent, and temperament to help lead our school through the challenges ahead," says Kent Syverud, dean and the Ethan A.H. Shepley University Professor. "In light of dramatic current changes in the practice of law, his background in curriculum development will be a major asset as we focus on this area in the coming year."

Joy succeeds Daniel Keating, the Tyrrell Williams Professor of Law, who is returning to the full-time faculty. Keating, who joined the faculty in 1988, has served as interim dean twice, associate dean, and vice dean for a combined 16 years. The law school will celebrate Keating's many contributions at a reception next month.

A recipient of the AALS Pincus Award for outstanding contributions to clinical legal education, Joy joined the law faculty in 1998. Co-director of the Criminal Justice Clinic, he served as director of the Trial and Advocacy Program from 2002 to 2006. He is a firm believer in the clinical education model of helping students apply the theoretical learning of the classroom to real-life situations with clients.

"In light of recent changes in the practice of law and in legal organizations, law schools are re-examining best practices in legal education," Joy says. "I look forward to working with the law faculty and administration in continuing to develop our curriculum to prepare our students to be effective members of the legal profession for the present and future."

Joy previously worked in private practice in Cleveland and was on the law faculty at Case Western Reserve University. He is the author of numerous law review articles and co-author of the book, Do No Wrong: Ethics for Prosecutors and Defenders, published by the ABA in 2009. He served as a visiting professor of law at Aoyama-Gakuin University School of Law in Tokyo, and has had his scholarship translated into Japanese. He also has consulted with law professors starting new clinical legal education programs in Japan, and he was a commemoration speaker at the founding meeting of the Japan Clinical Legal Education Association.

In other new appointments:

MARION CRAIN, the Wiley B. Rutledge Professor of Law, will become the new director for the Center for Interdisciplinary Studies on January 1, 2010. An expert on labor and employment law, Crain will succeed John Drobak as the center's director. Before joining the law faculty in 2008, Crain directed the Center on Poverty, Work and Opportunity at the University of North Carolina. Drobak, the George Alexander Madill Professor of Real Property & Equity Jurisprudence, will return to full-time teaching. During the past nine years, Drobak has been highly successful in bringing pathbreaking research and conferences with an interdisciplinary focus to the law school.

JO ELLEN LEWIS, professor of practice, is serving as director of the Legal Practice Program in 2009–11, succeeding Professor Jane Moul, whose two-year term ended on July 1. Lewis, who previously served in this role, will be working closely with the Curriculum Committee on related issues.
Annette Ruth Appell  
**Associate Dean of Clinical Affairs; Professor of Law, and Co-Director, Civil Justice Clinic**

Annette Appell joined the Washington University Law faculty in 2008 as the inaugural associate dean of clinical affairs. In addition to integrating the clinical programs and planning and overseeing a renovation of the in-house clinic space, she published an article on adoption in the *Brigham Young University Journal of Public Law* and on child advocacy in the *Columbia Human Rights Law Review*, as well as entries on Palmore v. Sidoti and Santosky v. Kramer in the *Encyclopedia of the Supreme Court of the United States*. Appell was the lead organizer of Washington University Law’s Ninth Annual Access to Equal Justice Colloquium, titled “Critical Perspectives on Court and Law Reform,” in March 2009. She also presented scholarship and/or chaired panels at Houston Law School, the 2008 Annual Law & Society Conference in Montreal, Canada; and the 2008 AALS Clinical Section Workshop, in Tucson, Arizona.

**Susan Frelich Appleton**  
**John S. Lehmann Research Professor for 2009–10 and Lemma Barkeloo & Phoebe Couzins Professor of Law**

Susan Frelich Appleton recently published a new book, *Adoption and Assisted Reproduction: Families Under Construction* (with D. Kelly Weisberg), and two articles, “Parents by the Numbers” in the *Hofstra Law Review* and “Toward a ‘Culturally Cliterate’ Family Law?” in the *Berkeley Journal of Gender, Law & Justice*. In October 2008, she presented a paper at the University of Virginia at a conference designed as an interdisciplinary investigation of “What Is Parenthood?”; Appleton’s paper, “Gender and Parentage: Family Law’s Equality Project in Our Empirical Age,” will be included in a forthcoming book of essays from the conference. She continues to serve as a member of the Board of Directors of the American Bar Foundation and to play an active role in the governance of the American Law Institute, as secretary and as a member of the Council and the Executive Committee.

**David M. Becker**  
**Associate Dean for External Relations and Joseph H. Zumbalen Professor Emeritus of the Law of Property**


**Cheryl Block**  
**Professor of Law**

Cheryl Block was the primary organizer for the Federal Budget and Tax Policy for a Sound Fiscal Future conference. The interdisciplinary conference, held at the law school in March 2009, brought together government officials, researchers from nonprofit think tanks, and academics in economics, law, and political science for paper presentations and lively debates about the budget. Block will serve as editor for a book based upon the conference, which will include her paper on measuring bailout costs along with other papers and essays. Block continues work on her book, *Overt and Covert Bailouts: Developing an Effective Public Policy*, forthcoming with Cambridge University Press in 2011. Publication of the fourth edition of her *Corporate Taxation Examples & Explanations* is expected in 2010. She continues to lecture on taxation for Babri Bar Review and reads on a weekly basis in St. Louis to underprivileged preschool children through the Ready Readers program.

**Kathleen Clark**  
**Professor of Law**

Kathleen Clark spoke about “The Architecture of Accountability” at a faculty workshop at American University and at a government ethics conference at McGeorge School of Law. *Brigham Young University Law Review* will publish her article on that topic. Clark submitted written testimony about Bush Administration lawyers and U.S. torture policy to the Senate Judiciary Committee Subcommittee on Administrative Oversight and the Courts, and spoke about this issue at a public administration conference in Poland. Philippe Sands discussed her earlier article on this issue in his book, *Torture Team* (2008). Clark spoke before a Canadian federal commission (the Oliphant Commission) that is investigating the conduct of former Canadian Prime Minister Brian Mulroney; made a presentation about whistleblowing for state government lawyers in Wisconsin and Illinois; and spoke at a public forum in St. Louis on the military’s gay ban.

**Samuel W. Buell**  
**Associate Professor of Law**

Sam Buell published “The Upside of Overbreadth” in *New York University Law Review*. He is at work on a paper about good faith in the law, which he presented in spring 2009 to faculties at Berkeley Law, University of Illinois College of Law, and Washington University Law. He organized and hosted a March 2009 conference at Washington University Law on New Research in Regulation of Corporations, Managers, and Financial Markets, at which senior and junior scholars from numerous top law schools presented in-progress papers in an intensive workshop format. During the 2009–10 academic year, he will be a visiting associate professor at Duke Law School and New York University School of Law.

**Kathleen F. Brickey**  
**James Carr Professor of Criminal Jurisprudence**

Adrienne Davis  
William M. Van Cleve  
Professor of Law  
Adrienne Davis is working on projects on the law and philosophy of reparations; the legal regulation of slavery; and whether and how to legalize polygamy. She presented her work at conferences on the Opposite(s) of property, Duke Law School; Law, reparations and racial Disparities, University of Kansas School of Law; New Frontiers in Family Law, University of Utah College of Law; and the 20th Anniversary of Critical race theory, Iowa College of Law. She gave a keynote address at the Abolition of the transatlantic Slave trade conference, University of North Carolina; a faculty workshop, co-sponsored by Princeton University’s Center for human values and program in Law & public affairs; and a presentation at the SALt teaching Conference session on teaching the Law of Slavery, Berkeley Law School. Davis also participated in a Law & Society Annual Meeting panel on the book, Once You Go Black: Choice, Desire, and the Black American Intellectual.

Marion G. Crain  
Wiley B. Rutledge Professor of Law  
Marion Crain’s current research examines the impact of corporate branding on employee identity and investment in the firm. She presented “Free to Quit? Corporate Branding and the Longing to Belong” at the 25th Anniversary Retrospective Conference on Values and Assumptions in American Labor Law. Crain’s recent publications include a 2008 supplement to her casebook, Labor Law: Cases and Materials (with Ted St. Antoine & Charles Craver), and the proceedings of a conference on Wealth Inequality and the Eroding Middle Class, co-sponsored by the University of North Carolina’s Center on Poverty, Work & Opportunity (which Crain directed before moving to Washington University) and the American Constitution Society. The conference proceedings were published in the Georgetown Journal on Poverty Law & Policy. Crain was installed as the Wiley B. Rutledge Professor of Law in March, and received the 2009 David M. Becker Professor of the Year Award. In January 2010, she will become the director of the Center for Interdisciplinary Studies.

Rebecca Dresser  
Daniel Noyes Kirby Professor of Law and Professor of Ethics in Medicine  
Rebecca Dresser continued her work as a member of the President’s Council on Bioethics, attending four meetings and helping to develop council reports on newborn screening, transplantation, and health care access. She published articles on ethical issues in first-in-human studies in the Journal of Law, Medicine and Ethics and on allocation of resources for biomedical research in the American Medical Association’s Virtual Mentor. She also published articles on law and neuroscience, prenatal testing, and end-of-life decision-making, all in the Hastings Center Report. Dresser gave presentations at the University of Texas Law School, Wake Forest University, Mount Sinai Hospital in New York City, and Indiana University—Purdue University in Indianapolis. She also was an invited participant in two projects, one at the University of Washington, addressing the ethics of growth attenuation in children with profound developmental dis-
abilities, and the other at the University of Chicago, addressing the ethics of community-based health research.

John Drobak
George Alexander Madill Professor of Real Property & Equity Jurisprudence; Professor of Economics; and Director, Center for Interdisciplinary Studies

John Drobak organized a symposium on law and the new institutional economics that was published in the Washington University Journal of Law & Policy. He and his co-author Douglass North wrote an article about judges’ intuition, titled “Understanding Judicial Decision-Making: The Importance of Constraints on Non-Rational Deliberations,” for the symposium.

Dorsey D. Ellis, Jr.
Dean Emeritus and William R. Orthwein Distinguished Professor of Law Emeritus

Dan Ellis received the University’s Distinguished Teaching Award at Founders Day in November 2008. He served on a three-person advisory committee to the president of Case Western Reserve University regarding law school administration. As academic director of the law school’s Transnational Law Program, he participated in the annual conference for Atlantis grant recipients in Brussels. He also participated in the ABA Antitrust Section’s annual meeting in Washington, D.C. Ellis delivered the keynote address for Taiwan National Chiao Tung University’s conference on intellectual property and antitrust law, and lectured on U.S. criminal enforcement of antitrust law at the Taiwan FTC. He was selected as the Honorary Grand Marshal for Washington University’s 2009 Commencement Ceremony. In June 2009, he traveled to Lisbon, Portugal, and Trento, Italy, to plan the effective participation of two European partners in the Transnational Law Program.

Frances H. Foster
Edward T. Foote II Professor of Law

Frances Foster continues her research and writing on inheritance and trust law reform. Her article, “Individualized Justice in Disputes over Dead Bodies,” was published in the October 2008 issue of Vanderbilt Law Review. Her comparative law article, “American Trust Law in a Chinese Mirror,” has been accepted for publication in the January 2010 issue of Minnesota Law Review. This article examines the Chinese-language critique of American trust law and possible lessons for U.S. scholars and reformers. Foster is currently working on an article titled “Should Pets Inherit?”

Katherine Goldwasser
Professor of Law and Director, Government Lawyering Clinic

Kathy Goldwasser prepared for the fall 2009 launch of a project that will pair Washington University Law students with students at Northwest Academy of Law, a high school in the St. Louis Public Schools system. The law students will offer workshops and/or short courses on contemporary legal and social issues and on pursuing post-secondary education. Goldwasser is also scheduled to speak to Missouri’s Court of Appeals judges in their annual Appellate Forum on recent developments in the law governing the use of DNA evidence in criminal cases.

Michael M. Greenfield
George Alexander Madill Professor of Contracts & Commercial Law

The fifth edition of Michael Greenfield’s casebook and statutory supplement, Consumer Transactions, was published in January. In October 2008, a classroom in Seigle Hall was dedicated in recognition of his 40 years of service to the school, especially in connection with the construction projects for Anheuser-Busch and Seigle halls.

John Owen Haley
William R. Orthwein Distinguished Professor of Law

Among his presentations, John Haley spoke on political foundations of private law in medieval Europe and Japan at the Global Economic History Network conference, Utrecht University, and presented “Rethinking Contract Practice and Law in Japan” at an international conference at the McGeorge School of Law, University of the Pacific, Sacramento. His paper from the McGeorge conference was published in the Journal of East Asia and International Law, and his Utrecht presentation will be adapted for chapters in his forthcoming book, Law’s Evolution. He also delivered the 10th John Whitney Hall Lecture on Japanese Studies, Yale University; served as an organizer and panelist for the Thomas L. Blakemore Symposium, International House of Japan in Tokyo; presented at the Sho Sato Conference on Japanese Law, Boalt Hall; and served as a discussant on the Tokyo Trial at a Joint Center for East Asian Studies conference and on civil law at the Association of Asian Studies Annual Meeting.

Rebecca Hollander-Blumoff
Associate Professor of Law

Rebecca Hollander-Blumoff’s article, “Just Negotiation,” was selected for presentation at the 2009 Stanford–Yale Junior Faculty Forum. She also presented “Just Negotiation” at the University of Missouri Law School Faculty Colloquium. In January 2009, Hollander-Blumoff was elected to the Executive Committee of the AALS Section on Civil Procedure. She served as an invited discussant at the Conference on Empirical Legal Studies at Cornell Law School in September 2008. Her article, “Procedural Justice in Negotiation: Procedural Fairness, Outcome Acceptance, and Integrative Potential,” co-authored with Tom R. Tyler, was published in the June 2008 issue of the peer-reviewed journal, Law & Social Inquiry. Additionally, Hollander-Blumoff organized the second year of a series of regional junior faculty works-in-progress workshops. She also was named a Treiman Fellow at the law school in 2008-09.

Emily Hughes
Associate Professor of Law and Co-Director, Criminal Justice Clinic

Emily Hughes’ article, “Mitigating Death,” is forthcoming in the Cornell Journal of Law and Public Policy. She published “Taking First-Year Students
to Court: Disorienting Moments as Catalysts for Change” in the Washington University Journal of Law & Policy, as part of the New Directions in Clinical Education Theory and Practice Roundtable. She is currently working on the second edition of her co-authored book, Federal Habeas Corpus: Cases and Materials. Her research in the area of capital mitigation has continued through the Capital Jury Project. Hughes also taught at the Clarence Darrow Death Penalty Defense College, co-hosted by DePaul University and the University of Michigan, and she continues to serve as a board member of Washington University’s Association of Women Faculty.

**Peter Joy**  
Professor of Law and Co-Director, Criminal Justice Clinic  
Peter Joy’s new co-authored book, Do No Wrong: Ethics for Prosecutors and Defenders, ABA, was published in spring 2009. He also published articles addressing clinical legal education and legal ethics in Lawyers & Clinical Legal Education, the Washington University Journal of Law & Policy, and Criminal Justice. He was a presenter at an international legal ethics conference in Australia, a faculty workshop at Monash University in Melbourne, the Midwest Clinical Conference, the AALS Clinic Directors’ Conference, and the Clinical Legal Education Association’s New Clinicians Conference. He serves on the AALS Section on Professional Responsibility’s Executive Committee, the ABA Section on Legal Education & Admissions to the Bar Accreditation Committee, the Clinical Law Review Board of Editors, and the Society of American Law Teachers Board of Governors. He is also a contributing editor for the ABA Criminal Justice and a member of Washington University’s Academic Freedom and Tenure Committee. He will serve as the law school’s vice dean, beginning in January 2010.

**Daniel Keating**  
Vice Dean and Tyrrell Williams Professor of Law  
Dan Keating published new editions of two casebooks this past year. In winter 2008, Aspen published Federal Habeas Corpus: Cases and Materials, in spring 2009. Among her other international work, she recently concluded a State Department exchange project for Nepali mediators and mediation trainers; consulted with community mediators and mediation trainers in Thailand for a proposed education and development project as a condition for parole, and to require participation in a religious prison program. Konig also published an Emmy Award-winning film. Among his presentations and publications, his work on the use of originalist interpretation will appear in UCLA Law Review, his paper on Thomas Jefferson is in the international conference proceedings of Tsinghua University in Beijing, and the co-edited papers from the law school’s Dred Scott symposium will be published in 2010.

**Pauline Kim**  
Associate Dean for Research & Faculty Development and Professor of Law  

**David T. Konig**  
Professor of History and Professor of Law  
David Konig completed a term as chair of the Law and Society Association’s J. Willard Hurst Prize Committee and assumed the chair of the American Society for Legal History’s Kathryn Preyer Prize Committee. He worked with legal scholars from Harvard, Yale, and the University of Pennsylvania on a project to publish student notebooks from the Litchfield Law School, America’s first, from the 1780s through the 1820s. Konig continued his role on the advisory committee to restore and place online selected Missouri Circuit Court records from the 19th century; the Freedom Suits project was the subject of an Emmy Award-winning film. Among his presentations and publications, his work on the use of originalist interpretation will appear in UCLA Law Review, his paper on Thomas Jefferson is in the international conference proceedings of Tsinghua University in Beijing, and the co-edited papers from the law school’s Dred Scott symposium will be published in 2010.

**C.J. Larkin**  
Senior Lecturer in Law and Administrative Director, Alternative Dispute Resolution Program  
C.J. Larkin served as a Fulbright Senior Specialist at Utrecht University in various areas of Alternative Dispute Resolution during summer 2009. Among her other international work, she recently concluded a State Department exchange project for Nepali mediators and mediation trainers; consulted with community mediators and mediation trainers in Thailand for a proposed education and
exchange program; and led a workshop on Cross-Cultural Issues in Mediation at a law firm in New Delhi, India. She was appointed chair of the Attorney–Client Dispute Resolution Committee of the Missouri Bar; served as a co-facilitator with the Department of Justice’s Community Relations Service on two St. Louis-area projects dealing with municipal government and local conflict; and co-authored a training manual and audio-tapes for Somali and Somali Bantu community mediators. In 2008–09 she continued to coach three lawyering skills teams, including the Representation in Mediation Team, which placed second in the nation.

David S. Law
Professor of Law and Professor of Political Science

David Law was awarded an International Affairs Fellowship in Japan (Hitachi Fellowship) by the Council on Foreign Relations and was a visiting associate professor in the Faculty of Law at Keio University, Tokyo in summer 2008. Throughout the year, he gave numerous scholarly presentations, including at the Public Law and Political Economy Conference at Harvard; the Conference on Empirical Legal Studies at Cornell; the Comparative Constitutional Law Roundtable at George Washington University; the Symposium on Constitutional Design at the University of Texas; the University of California, Santa Cruz; and the International Affairs Fellows Conference of the Council on Foreign Relations in New York. He also presented his work at the annual meetings of the American Political Science Association, the Midwest Political Science Association, the Western Political Science Association, and the Law and Society Association. He published “A Theory of Judicial Power and Judicial Review” in the *Georgetown Law Journal*, and delivered the journal’s Invited Author Lecture.

Stephen H. Legomsky
John S. Lehmann University Professor

Steve Legomsky advised the Obama transition team on immigration policy and recently testified before a U.S. House immigration subcommittee on deportation adjudication. He has taken on a co-author (Professor Cristina Rodríguez of New York University) for the fifth edition of his immigration and refugee law course book, which has now been adopted at 172 U.S. law schools. They are nearing completion of the fifth edition. Legomsky also wrote an article, “Portraits of the Undocumented Immigrant,” to be published by the *Georgia Law Review*, and contributed a chapter on the globalization of immigration and nationality law for an edited book to be published by Routledge Press. Additionally, he published book chapters on foreign students (MIT Press) and asylum and the rule of law (Cambridge University Press). Legomsky recently spoke at Hebrew University of Jerusalem, the University of Potsdam, Catholic University (D.C.), Penn State Dickinson, and several local venues.

Ronald M. Levin
Henry Hitchcock Professor of Law

Ronald Levin and Michael Asimow of UCLA School of Law published the third edition of their casebook, *State and Federal Administrative Law*. Levin and his co-reporters Frank Emmert and Christoph Feddersen also published *Administrative Law of the European Union: Judicial Review*, as part of a multivolume treatise sponsored by the ABA. In summer 2008, Levin participated in writing the ABA Administrative Law Section’s recommendations to the incoming President-Elect of the United States. In November, he spoke at a conference at American University on judicial review aspects of the TARP bailout legislation. In April 2009, he spoke at a program sponsored by the Administrative Law Review marking the 25th anniversary of *Chevron* v. NRDC, the Supreme Court’s leading case on judicial deference in administrative law. Levin continues to serve as the ABA’s advisor to the drafting committee to revise the Model State Administrative Procedure Act.

Jo Ellen Lewis
Professor of Practice and Director, Legal Practice Program

Jo Ellen Lewis was appointed director of the Legal Practice Program, as of July 1. She also is serving a five-year appointment as a Fulbright Senior Specialist. This past summer, she conducted workshops at Seoul National University (SNU) for law faculty on developing and implementing a legal writing program. The workshops were co-sponsored by SNU and the Korean Association of Law Schools (KALS). She also gave a multiday workshop, co-sponsored by SNU and KALS, on teaching legal writing. Additionally, Lewis spoke at Korea University regarding the law school’s clinical programs and was an invited visiting lecturer at Aoyoma Gakuin University in Tokyo, where she taught an undergraduate and a graduate law course. Last fall, she taught two short courses in the Global Masters Program and

Professor of Practice Jo Ellen Lewis, right, is serving as the director of the Legal Practice Program.
Professor Daniel Mandelker was among the presenters at the New Directions in Environmental Law Symposium. The proceedings will be published in a forthcoming issue of the *Washington University Journal of Law & Policy*, which will also pay tribute to Mandelker’s work in this area.

the Global Legal Studies program at Universidade Católica Portuguesa in Lisbon, Portugal. Lewis continues to serve as an advisor for the Wiley Rutledge Moot Court.

**Gregory Magarian**

Professor of Law

Gregory Magarian continues to focus his scholarship and teaching on free speech, the law of politics, and law and religion. His article, “Substantive Media Regulation in Three Dimensions,” was recently published in the *George Washington Law Review*. In November 2008, he addressed 25 international journalists on election issues, as part of a U.S. Department of State Foreign Press Center visit. He also was a frequent commentator in the news media during the presidential campaign and election.

**Daniel R. Mandelker**

Howard A. Stamper Professor of Law

Dan Mandelker published articles on planned unit development legislation in *The Urban Lawyer* and on prior restraint issue in sign regulation in the *Zoning and Planning Law Report*. He spoke at the “NEPA at 40” conference sponsored by the Environmental Law Institute in Washington, D.C., and at a session on digital signs at the American Planning Association’s annual planning conference in Minneapolis, Minnesota. Voters in the city of New Orleans adopted charter amendments drafted by Mandelker that require a comprehensive planning process and consistency of land-use regulations with a comprehensive plan. The ABA House of Delegates adopted a model land-use procedures law based on legislation drafted by Mandelker.

**Andrew Martin**

Professor of Law; Professor & Chair, Department of Political Science; and Director, Center for Empirical Research in the Law

Andrew Martin published articles in the *University of Pennsylvania Law Review*, *Tulsa Law Review*, and *Washington University Journal of Law & Policy*. Martin and other Center for Empirical Research in the Law collaborators continue work on the Supreme Court Database (supremecourtdatabase.org) and a study of institutional legitimacy of constitutional courts across the globe. Both of these projects are funded by the National Science Foundation. Martin’s research was honored by *The Green Bag* as an Exemplary Legal Writing Honoree for his work on judicial drift published in *Judicature*. He also was recognized for the fourth time by the Graduate School of Arts & Sciences for Excellence in Mentoring.

**Charles R. McManis**

Thomas and Karole Green Professor of Law; Director, Intellectual Property & Technology Law Program; and Co-Director, Center on Law, Innovation & Economic Growth


**Carl Minzner**

Associate Professor of Law

Carl Minzner’s article, “Riots and Coverups: Counterproductive Control of Local Agents in China,” was selected for publication in the *University of Pennsylvania Journal of International Law* in fall 2009. His article, “Judiciary Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives On,” was published by the *New Mexico Law Review* in spring 2009. Over the past year, he presented his papers at Columbia, Yale, NYU, and the Chinese Academy of Social Sciences. He also was the invited speaker at a Houston World Affairs Council meeting on Chinese legal and political reform; published op-eds on Chinese domestic politics in the *New York Times*, *International Herald Tribune*, and *St. Louis Post-Dispatch*; and taught classes on American property law at the P.R.C. State Intellectual Property Office and the East China University of Politics and Law. He continues to work to enhance Washington University’s relationships with Chinese law schools.
A. Peter Mutharika
Charles Nagel Professor of International & Comparative Law and Professor of African & African American Studies

Peter Mutharika was installed as the Charles Nagel Professor of International & Comparative Law on September 14, 2009. He recently was appointed Malawi’s Minister of Justice and Constitutional Affairs; he also won a seat in Malawi’s Parliament with 82 percent of the vote. Mutharika previously served as Malawi’s Chief Advisor to the President on Constitutional, Legal, and International Affairs. In May 2009, Mutharika’s efforts contributed to the successful election of his brother, Bingu wa Mutharika, to a second term as Malawi’s president. Mutharika also has been serving as the advisor to the ABA’s Rule of Law Initiative for Africa, and he is chairing the Institute for Democracy and Policy Studies, a newly established think tank designed to enhance Malawi’s democracy and state capacity. Additionally, he continues his work as a member of the Panel of Arbitrators and Panel of Conciliators for the International Centre for Settlement of Investment Disputes. In December 2008, he received the International Jurist Award.

Kimberly Jade Norwood
Professor of Law and Professor of African & African American Studies

Kim Norwood received the National Bar Association’s 2009 Humanitarian Award, the Mound City Bar Association’s 2009 Scovel Richardson Community Service Award, and the St. Louis Daily Record/Missouri Lawyers Media’s 2009 Women’s Justice Award in the category of Legal Scholar. The awards were granted, in large part, as a result of a high-school-to-law-school pipeline and mentoring program she created as part of her Race, Public Education & the Law course. The program links together area lawyers, Washington University Law students, and students at various local high schools with substantive law enrichment programming designed to both educate and pique student interest in careers in law. She continues to supervise law students doing public interest externships in Accra, Ghana.

During summer 2009, she also arranged for students to go to Kenya to help victims of past government abuses seek redress before the country’s newly created Truth, Justice & Reconciliation Commission.

Stanley L. Paulson
William Gardiner Hammond Professor of Law

Stanley L. Paulson received, in 2008–09, invitations to academic conferences in Oxford, Nijmegen, Bielefeld, Vienna, Antwerp, Paris, Bucharest, Leicester, and London. Invitations to conferences in 2010 include those in Buenos Aires, Mexico City, and, again, Oxford. In addition, for the summer of 2010, Paulson has received invitations to deliver guest lectures at major universities in Australia, including Brisbane, Canberra, Melbourne, and Sydney.

Neil Richards
Professor of Law

Neil Richards continues to teach and write about freedom of speech and privacy law. His article, “Intellectual Privacy,” was published by the Texas Law Review, and a review essay, titled “Privacy and the Limits of History,” appeared in the Yale Journal of Law and Humanities. His article, “Rethinking Free Speech and Civil Liability” (with Daniel Solove), is forthcoming in the Columbia Law Review. Richards also presented his scholarly work at faculty workshops and conferences at the University of California, Berkeley, George Washington University, Fordham University, and Washington University.

Laura Rosenbury
Professor of Law

Laura Rosenbury visited at Stanford Law School in fall 2008 and the University of Chicago Law School in spring 2009. Throughout the year, she presented works-in-progress at Loyola Law School Los Angeles, Northwestern University School of Law, the Stanford University Political Theory Workshop, Thomas Jefferson School of Law, and University of Maryland Law School. Rosenbury also participated in a working group on proxy voting for children under the direction of Dr. Robert Pantell, the former head of pediatrics at the University of California, San Francisco Medical School.

Leila Nadya Sadat
Henry H. Oberschelp Professor of Law and Director, Whitney R. Harris World Law Institute

Leila N. Sadat is overseeing a two-year Crimes Against Humanity Initiative to study related international law and to draft a multilateral treaty. During the past year, she convened two meetings of international experts, first at the law school and subsequently in The Hague. She gave presentations and/or chaired panels on Nuremberg, unlawful enemy combatants, the International Criminal Court (ICC), and other international law topics at International Law Weekend; The Chautauqua Institution; International Law Association’s 73rd Biennial Conference in Rio de Janeiro, Brazil; Trinity College; and Princeton, Leiden, Notre Dame, Denver, and Case Western Reserve universities. She participated in a two-day consultancy with

Adam Rosenzweig
Associate Professor of Law

Adam Rosenzweig’s current research focuses on the phenomenon of tax havens, and their persistence in the face of significant and continued criticism, as well as the taxation of private investment funds. The seventh edition of his co-authored book, Problems and Materials in Federal Income Taxation, was published by Aspen in 2008. He recently presented his article, “Not All Carried Interests Are Created Equal,” at the Washburn University Tax Colloquium and the Northwestern Journal of International Law & Business Symposium on Private Equity; it will be published in the symposium proceedings. He also gave a presentation on “Are Offshore Investment Funds Beyond the Tax Law?” at the Fourth Annual Junior Tax Scholars Forum. His article, “Imperfect Financial Markets and the Hidden Costs of a Modern Income Tax,” was published in the Southern Methodist University Law Review. He was named a Treiman Fellow at the law school in 2008–09.
Karen Tokarz was a visiting scholar at the Program on Negotiation at Harvard Law School, while on sabbatical in 2008–09. In the fall, she coordinated a colloquium on Community Lawyering with the Harvard Clinical Program. In the spring, she spoke in the opening plenary of the Program on Negotiation inaugural conference on Mediation Pedagogy. Tokarz was a Fulbright Senior Specialist in 2008–09, assisting law faculty at the University of KwaZulu-Natal in Durban, South Africa.

Melissa A. Waters
Professor of Law
Melissa Waters continues to focus her teaching and scholarship on foreign relations law, international law, conflict of laws, and human rights law. Her article, “Getting Beyond the Crossfire Phenomenon: A Militant Moderate’s Take on the Role of Foreign Authority in Constitutional Interpretation,” was recently published in the Fordham Law Review. She also has book chapters forthcoming on international jurisdictional conflicts in hate speech and defamation law and on lessons from the Sanchez-Llamas case, which concerns the right of a person detained in a foreign country to notify his or her home country’s consulate.

Peter J. Wiedenbeck
Joseph H. Zumbalen Professor of Law
Working with Harvard Professor Emeritus William D. Andrews, Peter Wiedenbeck prepared a thoroughly revised sixth edition of the casebook, Basic Federal Income Taxation, which was published by Aspen Law & Business in spring 2009. He is currently completing work on a book that is tentatively titled ERISA: Principles of Employee Benefit Law, which is scheduled for publication by Oxford University Press in early 2010.
Alumnus Seeks Best Results for Families

FIRM: David Littman PC, Denver
www.littmanfamilylaw.com

ATTORNEYS: David Littman, JD ’80, and Joshua S. Wohl

AREA OF PRACTICE: Family Law

BRIEF BACKGROUND: David Littman founded his firm in 1981. The flexibility of his small practice has allowed him to serve as a part-time magistrate; engage in leadership roles with the Colorado Bar Association, including president of the 900-member Family Law Section; and serve as a pioneer in bringing collaborative law to Colorado.

Q: Why did you choose to practice in a small firm?
A: My personality is better suited to being the captain of a small ship rather than a sailor on a big boat. Few large firms handle plaintiff’s medical malpractice, plaintiff’s employment law, and family law matters. I have been drawn to these areas as a result of my enjoyment of direct contact with my clients who are human beings rather than “corporations.” Early in my career, I was lucky to obtain an extremely successful outcome for a client in a wrongful death case. In hindsight, it was foolish for an attorney with less than two years’ experience to take on four insurance defense firms, but the experience provided me with the boost of confidence that I could handle anything to which I put my mind and heart.

Q: Do you feel that your firm size is a plus, a minus, or a nonfactor in your practice?
A: The small size of my firm, either two or three lawyers, has enabled me to continue to practice in the restored Victorian house I purchased in 1984. This has provided our clients with a sense of continuity and comfort. I also am able to bring a dog to work. Presently, Lily, a five-year-old golden retriever, plays an active role in meeting, greeting, and keeping clients’ stress levels modulated. Being in control of my practice has allowed me to be involved in a variety of professional activities. My small firm practice has enabled me to create an environment of innovation and progressive thinking.

Q: Why did you choose your particular area of practice?
A: With a master’s degree in counseling psychology from Washington University, working with people was a natural. I represent parties involved in family law issues, engage in alternative dispute resolution, and conduct Child and Family Investigations (custody evaluations). Being able to spend my time professionally doing things I enjoy brings great satisfaction.

Q: What are your views on the role of collaborative law?
A: Collaborative law offers a significant option for resolving family law issues without litigation. It creates an environment in which both parents work together, with the assistance of experienced and skilled counsel, to seek mutually acceptable outcomes and to use family resources (financial and emotional) to meet the greatest number of needs possible. The model serves divorcing families well, as it does the least harm to the parents’ abilities to work with one another once the dissolution of marriage is final and the attorneys have stepped away.

Q: What has been the most rewarding case you have handled?
A: Two cases come to mind. In one, I started as a guardian ad litem for an infant whose parents were accused of shaking her and causing traumatic brain injury. However, my meetings with the parents, observations of their interactions with the older siblings, and their repeated efforts to obtain care for their daughter suggested they were unlikely to have caused these injuries. After I consulted with a friend who is a developmental pediatrician, the infant underwent some tests. A $15 urinalysis led to the diagnosis of a genetically related metabolic disorder. The court action was dismissed, and the child was returned to her parents. The resulting malpractice suit led to a multimillion-dollar outcome, which enabled the family to meet the child’s needs for the future.

In the second case, as a young attorney, I bucked the recommendations of two experienced custody evaluators and advocated leaving a 10-year-old girl with her schizophrenic mother. The child had begged me not to place her with her father whom she viewed as a bully. About 11 years later, I ran into her, and she thanked me for “saving her life.” Her brother who had been placed with their father was in prison, but she was graduating from college, engaged, and in the process of buying her first home.

I have learned to blend diligent investigation with a gut-level instinct for coming up with the best recommendations. The feedback over the years has suggested that this combination has served my clients well. It is very satisfying to look back at my career and feel that I have made a difference.
**Alumni Among the First Attorneys to be LEED Certified**

**TWO FORMER LAW SCHOOL CLASSMATES**, Ian Forshner, BSBA ’01, JD ’06, and Michael A. Smith, JD ’06, are among the first attorneys to be certified as Leadership in Energy and Environmental Design (LEED®) Accredited Professionals by the U.S. Green Building Council (USGBC). The LEED AP credential distinguishes these alumni as construction project team members qualified to manage the LEED Green Building Rating System™, due to their advanced depth of knowledge in green building practices and in the LEED certification program.

After graduating from law school, the two have followed similar career paths. Both are practicing in the greater New York metropolitan area as associates with large, nationally recognized law firms with a focus on real estate and construction-related transactions and disputes.

“LEED is firmly established as the primary mechanism through which government and corporate initiatives are transforming ‘green building’ practices from voluntary to mandatory,” says Smith, an associate at DrinkerBiddle. “Naturally, LEED is contributing important legal issues to the evolving landscape of the ‘green’ movement. Ian and I anticipate that, as LEED AP attorneys, we will be well suited to identify, and successfully handle, a wide variety of LEED-driven legal issues.”

Forshner notes that there are only approximately 700 attorneys nationwide who have earned the LEED AP credential. As attorneys, their certification is also noteworthy since the LEED exam is primarily geared toward architects and engineers—and has only a 34 percent pass rate. Indeed, the LEED exam is a rigorous endeavor, which requires candidates to understand and apply the technical standards embodied in the LEED certification program. “We are now focusing our efforts on helping to develop the emerging field of green building law,” says Forshner, an associate at Lewis Brisbois Bisgaard & Smith LLP.

“As young, motivated LEED AP attorneys, we have an excellent opportunity to make a real impact.”

**Ruger Installed as Honorary Order of Coif Initiate**

**PETER RUGER**, JD ’69, was officially installed as an honorary initiate of the Order of the Coif at the law school’s Academic Excellence Reception on May 14, 2009.

Ruger, a longtime adjunct professor of law, teaches in the law school’s Intellectual Property & Nonprofit Organizations (IP/NO) Clinic, as well as teaches Nonprofit Organizations.

Ruger previously was of counsel at Tueth, Keeney, Cooper, Mohan & Jackstadt PC and was formerly general counsel for Washington University. Ruger has led and/or served on the boards of numerous nonprofit organizations.

He works closely with David Deal, IP/NO Clinic director and lecturer in law, on mentoring students and arranging for projects in the nonprofit sector. Under his direction, clinic students recently have developed articles of incorporation for several charter schools, successfully challenged the denial of a sales tax exemption, analyzed animal rights legislation, developed a whistleblower policy, and assisted a nonprofit that provides hospice care in Thailand.

The honorary initiate for the Order of the Coif is selected for contributions to the legal profession and the law school. The Academic Excellence Reception honors students from the top 15 percent of the graduating class. A number of these will go on to become members of the Order of the Coif, once final grades have been determined.
1959
Sanford Neuman was elected the 38th president of the Jewish Federation of St. Louis. He also has served as vice president of the federation’s community fundraising campaign. Neuman is a founding partner and chair of Gallop, Johnson & Neuman LC.

1969
Maury B. Poscover was recently elected president of the Board of Directors of ALI-ABA; his term will run for four years. The ABA and the American Law Institute (ALI) collaborate to provide a national program of continuing legal education for attorneys. Poscover is a partner at Husch Blackwell Sanders LLP in St. Louis, representing commercial financial institutions in structuring loans, developing strategies, handling financial restructurings, and providing advice on lender liability avoidance. More recently, he has focused on providing counsel to middle-market companies.

1970
Keith Hazelwood received the 2008 Citizen of the Year Award from the St. Charles Chamber of Commerce. The award is given to an individual who has “exemplified all aspects of selfless giving to the community and has made St. Charles a better place to live and work.” He is a partner at Hazelwood & Weber LLC in St. Charles, Missouri.

1974
Russell K. Scott, a partner at Greensfelder, Hemker & Gale PC in Belleville, Illinois, has been elected to the Board of Governors of the Illinois State Bar Association (ISBA). The 25-member board directs the operations and activities of the 35,000-member, statewide organization. He previously served as a member of the ISBA Assembly and is active on the Standing Committee on Judicial Evaluations, among other posts. He served for a two-year term as president of the Illinois Bar Foundation. In April 2009, he was among nine exemplary Illinois attorneys who were inducted as Laureates of the Academy of Illinois Lawyers. Scott concentrates his practice in the defense of industrial accidents, products liability, and toxic tort cases, and he has been active in numerous professional and civic endeavors.

1977
Kenneth W. Bean has been elected to the Board of Directors of the Missouri Organization of Defense Lawyers, which is composed of lawyers throughout the state who concentrate in the defense of civil litigation. Bean is a shareholder and founding member of Sandberg Phoenix & von Gontard PC in St. Louis. He focuses his practice in health law and litigation, including the defense of high-risk medical malpractice litigation and medical products liability. During the last 10 years, he has tried to completion more than 50 cases.

1984
George C. Thomas III (LLM ’84, JSD ’86), professor of law and the Judge Alexander P. Waugh, Sr. Distinguished Scholar at Rutgers School of Law–Newark, was named a Board of Governors Professor in recognition of his outstanding contributions to the many areas of criminal procedure. He is the author or co-author of numerous law review articles and several books, including The History and Future of Confessions, which will be published by Oxford University Press in 2010.

1986
Stephen Tock was re-elected to a four-year term on the Dwight Common School District 232 Board of Education. The leading vote recipient in the 2009 election, Tock was previously elected twice by write-in to two-year, unfulfilled terms on the board. He did not seek re-election after two terms as a township trustee, however. Tock also recently stepped down after 16 years as a member of the Livingston County, Illinois Commission on Children and Youth and of the commission’s Executive Committee.

1989
Lucy Unger, a partner at Williams Venker & Sanders LLC in St. Louis, was recently named chair of the firm’s Management Committee. Unger practices principally in the areas of commercial litigation, products liability, and medical malpractice in both state and federal courts in Missouri and Illinois.

1990
Rachel A. Camber is of counsel at Markowitz, Davis, Ringel & Trusty PA in Miami, Florida. She concentrates her practice in the areas of contract disputes, banking litigation, construction lien litigation, real property litigation, Uniform Commercial Code and secured transactions, and general corporate and appellate matters.

1994
Brian Benczkowski is serving as staff director for the U.S. Senate Judiciary Committee. He previously was chief of staff in both the...
Attorney General’s Office and the Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as majority counsel for the House Judiciary Committee.

Bob Gans was promoted to the position of assistant general counsel at CSC in Falls Church, Virginia. He specializes in employment law and litigation. Gans also recently was elected to a second term as vice president of external relations and pro bono/community service chair for the Washington Metropolitan Area Corporate Counsel Association. He resides in Potomac, Maryland, with his wife, Kelly; their two boys, Ryan, 7, and Jack, 4; and their daughter, Samantha, 1.

1995

Patricia L. Musick has been named to the Board of Directors at McAnany, Van Cleave & Phillips PA, a full-service law firm with offices in Kansas City, Kansas; Roeland Park, Kansas; St. Louis; and Springfield, Missouri. Musick’s practice includes administrative law, business litigation, education, insurance, labor and employment law, personal injury law, and workers’ compensation defense. She is the first female board member in the firm’s history.

1997

Heidi Forster Gertner and her husband, Gregory Gertner, welcomed their second child, Jason Lincoln Gertner, in March 2009. Jason joins sister, Abby. Gertner is an attorney for the U.S. Food and Drug Administration. The family resides in Bethesda, Maryland. She can be reached at heidigertner@yahoo.com.

Patrick Piscatelli reports that, “after many twists and turns,” he is in-house with EMC Corporation. Now living in Hingham, Massachusetts, he also spends time fishing, gardening, playing the occasional round of golf, and being a dad. He notes that it is “a far cry from days spent running on Taco Bell drive-thru, listening to R & B classics in a car that constantly needed a quart of oil, and in fear of being called upon.” He adds: “I often contemplate my days in St. Louis and those who helped me and were good to me. I am grateful.”

Craig Rosenthal is serving as senior vice president of SuddenLink Communications in St. Louis. He established and now oversees a full-service legal department for the multi-state provider of video, high-speed data, and telephone services.

Amy (Tucker) Ryan and her husband, Andy, announced the birth of their son, Joseph Delaney Ryan, on June 5, 2009. The Ryans live in St. Louis. She is an attorney with Martin, Leigh, Laws and Fritzlen PC, where she practices bankruptcy law. Ryan can be reached via e-mail at atr@mllfpc.com.

1998

Patrick Chavez received the Bar Association of Metropolitan St. Louis (BAMSL) 2009 President’s Outstanding Service Award. The award recognizes his work as co-chair of the Minorities in the Legal Profession Committee. He also is a member-at-large on BAMSL’s Board of Governors and serves on the Board of Directors of the St. Louis Bar Foundation. Chavez is a partner at Williams Venker & Sanders LLC in St. Louis.

Debbie Nye has been elected to partnership at Foley & Lardner LLP. Nye, who practices in Foley’s San Diego office, focuses on patent litigation and IP counseling.

Alex Pirogovsky has opened a new general practice law firm, Pirogovsky Fremderman Ltd. in Northbrook, Illinois. The firm handles bankruptcy, family law, real estate, personal injury, trusts and estates, civil litigation, collections, foreclosures, and traffic law matters. He previously practiced law at Schwartz Cooper Greenberger & Krauss; Ungaretti & Harris LLP; and Alex Pirogovsky Ltd.

CLASS GIFT GENEROSITY

Members of the 2009 Class Gift Committee gather to celebrate their success. Overall participation in the graduation class gift was 58 percent. Dean Kent Syverud, back row, center, thanks the committee members for their hard work. Members front row, from left are: Iliana Konidaris, Laura Crane, Elizabeth McDonald, Lauren Kupersmith, Stephanie Quick, Deanna Atchley, Alicia McDonald, Caldwell Collins, Megan Sindel, and back row, from left, Eric Powers, Aaron Block, Wallis Finger, David Cufman, Tanaz Faghihi, Bryan Pennington, Peter Slawnik, Drew Yaeger, Beth Siemer, Dan Tierney, and Jessica Malloy (not pictured: Whitney Cale, Mollie Grossman, Robert McDonald, and Tia Parks).
Jennifer A. Schwesig, a partner at Armstrong Teasdale LLP, has been named leader of the firm’s International Practice Group, which counsels U.S. and foreign companies, especially in Europe, Latin America, the Caribbean, and Asia and the Pacific Rim. Schwesig’s practice focuses on international corporate compliance and transactions. She serves as chair of the International Law Committee for the Missouri Bar and is a member of the ABA’s International Section, the Bar Association of Metropolitan St. Louis, and the American Society of International Law.

1999

Bamidele Adelayo (MLS ’99, JD ’01) and his wife welcomed Bolarinwa Gabriella Adelayo on December 25, 2008. Bolarinwa weighed in at 8 lbs., 8 oz.

Charissa Steffensmeier and her husband, Ryan, announce the birth of their fourth child, Elijah Richard, on February 16, 2009. Elijah joins brothers, Xavier and Tobias, and sister, Helena. Steffensmeier continues to work as labor and employment counsel for Macy’s Inc. in St. Louis.

2000

Necia L. Chambliss is a judge advocate general with the U.S. Coast Guard, currently serving as senior appellate defense counsel. She was admitted to the bars of the Court of Appeals for the Armed Forces and the Supreme Court of the United States. Previously, she served as the senior counsel representing members being processed through the Coast Guard’s Physical Disability Evaluation System. She is married and has a 10-month-old daughter.

2001

Kwang Rok Kim (JSD ’01) is a professor at Chungbuk National University, teaching Corporations and Securities Law. He was recently appointed vice dean of the law school, which is one of 25 new law schools in Korea.

Melissa Marglous Merlin has been selected to participate in the 2009–10 Leadership St. Louis class, an initiative of FOCUS St. Louis. In 2009, Merlin also was one of 176 attorneys nationwide to receive the BTI Client Service All-Star award, given to attorneys determined to give superior client service to Fortune 1000 clients. Merlin is a partner at Husch Blackwell Sanders LLP in St. Louis and concentrates her practice in the areas of business litigation, product liability, and toxic tort.

Matthew R. Millikin is serving as deputy director of the nonprofit organization, Community Legal Resources, in Detroit, Michigan. He continues to serve as a member of the Washington University Detroit Regional Cabinet. Millikin previously was in private practice at Barris Sott, Denn & Driker PLLC. His clients included the Detroit Super Bowl XL Host Committee, General Motors Corporation, and the Wayne County Airport Authority. Before practicing law, Millikin served as a White House aide under President Bill Clinton.

Miriam Schaeffer (LLM ’01) successfully defended her thesis summa cum laude in December 2008, achieving the title of Dr. Miriam Schaeffer.

2002

Yusuf Caliskan (JSD ’02) reports that he recently took the last exam of his academic career. He is now an associate professor and vice dean of Koçaeli University School of Law in Turkey. The process involved writing a thesis and several articles for a law journal, which were then examined by a committee of five professors. Caliskan also underwent a verbal exam conducted by the panel. Additionally, his book on international intellectual property disputes, WIPO Arbitration and World Trade Organization, was published in February 2008.

Hyung Heon Kim (LLM ’02, JD ’04) works for SK Energy, the largest oil company in South Korea. Kim and his wife, Alice, were married in November 2008 and honeymooned in Paris.

2003

Isariya Aksaravut (LLM ’03) is working for a telecommunication company in Thailand. She also teaches Telecommunication Law for a private university in Bangkok. Additionally, she is studying issues related to human trafficking and refugees, and is assisting a professor on intellectual property research.

Khara Coleman married fellow New Orleanian Blaine Washington II on May 16, 2009. The wedding took place in Oak Park, Illinois. Coleman is an associate at Kirkland & Ellis LLP in Chicago. Her wedding photos can be viewed at kharaandblaine.weddings.com. She can be reached at misscoleman@gmail.com.

Kongkanok Kosallagoot (LLM ’03) was appointed as a judge in the southern part of Thailand.

Christopher J. Macchiaroli has left White & Case LLP in Washington, D.C., to become an Assistant United States Attorney in the U.S. Attorney’s Office for the Southern District of Florida.

2004

An article by Paul Eisner (IP LLM), “Weighing the Consequences of Section 998 Offers to Compromise,” was published in the June 2009 issue of Los Angeles Lawyer.
2005

Tzu Chou is now a partner at Rajah & Tann LLP in Singapore, an international arbitration firm. Chou practices general commercial litigation and arbitration.

2007

Edward Rasp III recently joined Linklaters in New York as an associate, practicing in restructuring and insolvency matters.

Brian Wolfe has been named deputy superintendent and chief operating officer of the St. Louis Public Schools. He previously was an associate at Kirkland & Ellis LLP in Chicago.

2008

James Bloom has joined Keller Rohrback LLP in Phoenix, Arizona, as an associate practicing chiefly with the firm’s Litigation Group.

Will Dunham recently joined Sherin & Lodgen LLP in Boston as an associate in the firm’s Litigation Department.


Tony Verticchio, an attorney at Keating Muething & Klekamp PLLC in Cincinnati, was recently admitted to practice law in Ohio.

He is in the firm’s Business Litigation Practice Group. Verticchio previously was admitted to practice in Kentucky.

Note: View Washington University Law’s online Class Notes (law.wustl.edu/Alumni/classnotes.asp) for recent additions, including individually reported selections to Best Lawyers in America and various Who’s Who honors, as well as 40 Under 40, 30 Under 30, Legal Eagle, Women’s Justice Award winners, and Leadership in Law award winners in various cities and states.

In Memoriam

John M. Drescher, Jr., JD ’53, a dedicated supporter of Washington University and the law school, died on June 18, 2009. He was 84. Drescher spent his entire legal career at Lewis, Rice & Fingersh, where he specialized in corporate and business law. He served as a radio operator in the Army during World War II and was also a veteran of the Korean War, including service at the Pentagon.

Among his many leadership roles, he was a longtime member of Trinity Episcopal Church in the Central West End and was on the Standing Committee of the Episcopal Diocese of Missouri.

The Hon. Delmar O. Koebel, JD ’53, a longtime friend of the law school, died on February 11, 2009. He was 83. Judge Koebel practiced law for 50 years, including three years on the bench in Belleville, Illinois, on the 20th Judicial Circuit. He also was an attorney for the cities of O’Fallon, Lebanon, and Summerfield, Illinois; McKendree College; and the SLIM Water Commission. A World War II U.S. Navy veteran, he was active in numerous legal and community organizations. At the law school, he and his wife, Betty, have an endowed scholarship.

Edward Y. Ku, JD ’70, a prominent international businessman and longtime supporter of the law school and University, died on March 29, 2009. He was 66.

A member of Washington University’s International Advisory Council for Asia, Ku served as executive director and general counsel of Yue Yuen Industrial (Holdings) Limited in Hong Kong. The company is considered among the largest branded athletic and casual footwear manufacturers in the world with production facilities in China, Vietnam, and Indonesia.

Robert H. McRoberts, Jr., JD ’51, a distinguished attorney and supporter of the law school, died February 9, 2009. He was 84. McRoberts worked side by side for many years with his father and namesake (also a law school alumnus, JD ’19) at Bryan, Cave, McPheters & McRoberts (now Bryan Cave LLP). After his retirement, he was of counsel at Weier, Hockensmith & Sherby PC. McRoberts served in the U.S. Navy during World War II and was a member of the Navy band. He also was on the boards of numerous charitable and community organizations.

Margaret Bush Wilson, a Washington University trustee emerita and prominent civil rights attorney, died on August 11, 2009. She was 90. Wilson was the first woman of color to chair the Board of Directors of the National Association for the Advancement of Colored People (NAACP). She also served as U.S. Attorney for the legal division of the Rural Electrification Administration of the U.S. Department of Agriculture and as an Assistant Attorney General in Missouri. The University bestowed upon her an honorary doctor of laws degree in 1978.

1950s

Noel L. Robyn, JD ’55

1960s

James T. Williamson, JD ’61
Benedict N. Messina, JD ’64
Prof. Raymond I. Parnas, JD ’64
Michael A. Turken, JD ’68

1970s

Stephen Dow Snoke, JD ’78

1990s

Stacy Lehrman Hart, JD ’95
Privacy Protections Key to Preventing Genetic Discrimination

WHEN THE GENETIC Information Non-Discrimination Act (GINA) was signed into law last year, the late Senator Edward Kennedy heralded it as “the first civil rights bill of the new century.” Its substantive provisions, which become effective this year, aim to eliminate discrimination based on genetic information by health insurers and employers.

At first glance, GINA seems like a typical anti-discrimination law. It adds a new category of forbidden discrimination, and its employment provisions are modeled on Title VII of the Civil Rights Act of 1964, which forbids race and sex discrimination. On closer examination, however, GINA is a strange sort of anti-discrimination law. Title VII was enacted as part of the Civil Rights Act of 1964 in response to the civil rights movement and widespread racial unrest. At the time, schools, workplaces, and public accommodations remained segregated in many parts of the country, and the effects of racial discrimination and inequality were starkly apparent. By contrast, there have been only a handful of documented cases of genetic discrimination. Additionally, no visible underclass, set apart by genetic risk of disease, has yet emerged in this society.

Thus, unlike traditional civil rights legislation, the purpose of GINA is not to counteract systemic disadvantage and existing inequalities. Instead, it aims to prevent the emergence of genetic discrimination and to do so specifically in order to promote the use of genetic technologies. Given the promise of genetic science, Congress passed GINA to “allow … individuals to take advantage of genetic testing, technologies, research, and new therapies.” Its stated purpose was not only to prevent discrimination, but also to “reliev[e] the fear of discrimination” and “allay concerns about the potential for discrimination.”

Such a goal may be a worthy one; however, the anti-discrimination provisions of GINA alone would be inadequate to achieve it. Experience with Title VII has shown that proving discrimination can be difficult. An employer is unlikely to admit when its personnel decisions have been influenced by race or sex. And unconscious stereotypes or cognitive biases may operate, even though the employer honestly believes that its decisions were not influenced by race or sex. As a result, much of the litigation under Title VII has struggled over questions of proof—whether and to what extent race or sex influenced a particular employment decision.

These same difficulties of proving discrimination are likely to reoccur under GINA. However, genetic discrimination differs in a crucial way. Race and sex are salient characteristics—attributes of an individual that are usually easily observable and difficult to conceal. By contrast, information about individual genetic traits is not readily apparent. For example, a carrier of the gene that causes increased risk of breast cancer cannot be identified through casual observation. And therefore, insurers and employers can only discriminate against that individual if they have access to the relevant genetic tests.

Thus, the key to preventing discrimination based on genetic traits lies in protecting the privacy of genetic information. If genetic information is available, it may be difficult for decision-makers to ignore, and yet proving that genetic information has influenced an insurance or employment decision may be quite difficult. On the other hand, if genetic information is unavailable, insurers and employers simply cannot discriminate on the basis of latent genetic traits.

Congress recognized this reality, and therefore, GINA also seeks to protect the privacy of genetic information by restricting insurers and employers from requesting, requiring, or purchasing such information. These restrictions, however, are subject to a number of exceptions. For example, in the employment context, it is not a violation if an employer learns of genetic information when requesting medical information in order to comply with federal or state family and medical leave laws; or when it “inadvertently requests or requires family medical history of the employee”; or where the information is acquired from “documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history.”

The number of exceptions and their vagueness reflect the difficulty of protecting all genetic information about an individual, given how pervasive genetic information is in our society. Medical records typically contain both genetic and nongenetic information, and knowledge about the illness of a person’s parent may reveal genetic information about that individual. Whether GINA has the effect that Congress desired—“relieving the fear of discrimination”—will depend less upon its anti-discrimination provision than upon how successful its privacy provisions are in protecting against the disclosure of individual genetic information.

Professor Pauline Kim, associate dean for research and faculty development, focuses her scholarship on employment law, workplace privacy, and judicial decision-making. She is the co-author of Work Law: Cases and Materials.